

No. 11222

IN THE

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

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COMPANIA CONSTRUCTORA BECHTEL-Mc-  
CONE, S. A., a corporation,

Appellant,

vs.

DOYLE McDONALD,

Appellee.

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## TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

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FILED

MAY 1 1935

PAUL H. DOWEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

O'MELVENY & MYERS

JACKSON W. CHANCE

LEO A. DEEGAN

433 South Spring Street

Los Angeles 13, California

For Appellee:

RUSSELL H. PRAY and

E. W. SHERIDAN

720 Security Building

Long Beach 2, California [1\*]

In the Superior Court of the State of California  
in and for the County of Los Angeles

No. LB C-12284

DOYLE McDONALD,

Plaintiff,

vs.

BECHTEL-McCONE-PARSONS CORPORATION,  
a corporation, COMPANIA CONSTRUCTORA  
BECHTEL-McCONE-PARSONS S. A., a corpo-  
ration, DOE ONE COMPANY, a corporation,  
DOE TWO COMPANY, a co-partnership, DOE  
THREE, DOE FOUR, and DOE FIVE,

Defendants.

### COMPLAINT

(On Contract for Work and Labor)  
and Certificate of Assignment and Transfer

The plaintiff complains of defendants and for cause of  
action alleges:

#### I.

That defendant Bechtel-McCone-Parsons Corporation,  
a corporation, is a Nevada corporation duly qualified to  
and doing business in the State of California as a foreign  
corporation with its principal place of business in the City  
of Los Angeles, County of Los Angeles, State of Cali-  
fornia.

#### II.

That defendant Bechtel-McCone-Parsons S. A., a cor-  
poration, is a South American corporation doing busi-  
ness in the State of California by and through its agent,  
the defendant Bechtel-McCone-Parsons Corporation, a  
corporation.

## III.

Plaintiff is not informed as to the true names of the defendants Doe One Company, a corporation, Doe Two Company, a co-partnership, Doe Three, Doe Four and Doe Five, and whether they be corporations, associations or natural persons, and for that reason said defendants, and each of them, are sued under said names as fictitious names and when plaintiff ascertains the true names of said defendants he will ask leave of Court to amend [2] this complaint and all subsequent proceedings herein to show the true names of said defendants and their capacities.

## IV.

That on the 4th day of April, 1944, the plaintiff and the defendants, and each of them, entered into a written contract, a copy of which is hereto annexed, and incorporated herein as though set forth at length. That under said contract plaintiff Doyle McDonald agreed to work for the defendants, and each of them, as a boilermaker in Awali, Bahrein Island, Persian Gulf. That the plaintiff was to receive a minimum monthly salary of Four Hundred Fifty Dollars (\$450.00) with overtime for all hours in excess of fifty-two (52) hours per week. That said contract provided for employment of plaintiff by the defendants, and each of them, for a period of eighteen (18) months from April 20th, 1944.

## V.

That the plaintiff has, at all times, done and performed all of the stipulations, conditions and agreements stated in said contract to be performed on his part at the time and in the manner therein specified.

## VI.

That the defendants, and each of them, have failed and refused and still refuse to perform the said contract on their side.

## VII.

That by reason of the premises the plaintiff has been damaged in the sum of Four Thousand Fifteen Dollars (\$4015.00), no part of which has been paid.

Wherefore, plaintiff prays judgment against the defendants, and each of them, in the sum of Four Thousand Fifteen Dollars (\$4015.00), for costs of suit, and for such other and further relief as to the Court seems just and proper in the premises.

RUSSELL H. PRAY

EDWARD W. SHERIDAN

By Russell H. Pray

Attorneys for Plaintiff [3]

Bah. D-4

JCB:ms

8-18-43

SALARY ALLOTMENT—BAHREIN EMPLOYEES

Bechtel-McCone-Parsons Corporation

Acting Under and Pursuant to Sub-Contract

With Companian Constructora Bechtel-McCone-Parsons S. A.

570 Mills Building

San Francisco, 4, California

Employee Doyle McDonald

Gentlemen:

Starting with salary payable on April 20th, 1944, and thereafter until terminated or amended by written notice,

you are hereby authorized to make the following allotment of all salary payments due the undersigned under his Temporary Employment Agreement with Bechtel-McCone-Parsons Corporation, dated April 4th, 1944, and Permanent Employment Agreement with Compania Constructora Bechtel-McCone-Parsons- S. A.

<u>Item No.</u>	<u>Monthly Deductions</u>	<u>Amount</u>
1	Field Allotment to be paid at Bahrein	\$50.00 per month
2	.....	.....
	.....	.....
	.....	.....
3	Balance of Earnings to be Deposited In Farmers & Merchants Bank, American Avenue Branch, located at 1401 American Avenue, Long Beach, California, to the credit of Savings Account Number 10335 of Doyle Mc- Donald.	.....

You are authorized to reply to inquiries in connection with my salary only to .....

Very truly yours,

Doyle McDonald

Dated at Los Angeles, California, this 4th day of April, 1944. [4]

Approved:

Bechtel-McCone-Parsons Corporation  
Acting under and Pursuant to Sub-  
Contract with Compania Constructora  
Bechtel-McCone-Parsons S. A.

By Wm. T. Dodson

Date April 4, 1944 [5]

Bah. D-5

JCB:ms

9/1/43

BECHTEL-McCONE-PARSONS CORPORATION

Engineers-Constructors

Mills Building, 220 Montgomery Street

San Francisco, 4, California

TEMPORARY EMPLOYMENT AGREEMENT

The undersigned, Bechtel-McCone-Parsons Corporation, has entered into a written agreement with Compania Construction Bechtel-McCone-Parsons S. A. to engage persons in the United States who will render services for the latter corporation which is the Construction Contractor under written agreement with The Bahrein Petroleum Company Limited to perform certain refinery construction work at Bahrein, Persian Gulf, and in the vicinity thereof.

It is understood that you are willing to enter into an employment agreement with said Construction Contractor to perform your services at Bahrein, Persian Gulf, and in the vicinity thereof, in accordance with the terms and conditions set forth in the attached contract.

Pursuant to the above mentioned agreement with Compania Constructora Bechtel-McCone-Parsons S. A. and contingent on your securing a passport and meeting our requirements of physical examination, we hereby engage you to proceed to Bahrein, Persian Gulf, at the salary and compensation, and upon the terms and conditions set forth in the attached contract, said salary hereunder to commence on the 20th day of April 1944. You are hereby assured that when you arrive at Bahrein,

Persian Gulf, the attached contract will be duly executed by said Construction Contractor, and you hereby agree to execute the attached contract upon arrival at Bahrein, Persian Gulf, and thereupon your employment hereunder shall terminate and your employment by said Construction Contractor shall commence in accordance with the attached contract. [6]

BECHTEL-McCONE-PARSONS CORPORATION  
Acting Under and Pursuant to Sub-  
Contract with Compania Constructora  
Bechtel-McCone-Parsons S. A.

By: Wm. P. Dodson  
Wm. T. Dodson  
Ass't. Foreign Employment Manager

I Accept the Foregoing This 4th day of April, 1944.

Doyle McDonald

es [7]

COMPANIA CONSTRUCTOR \_ BECHTEL-McCONE-  
PARSONS S. A.

DOYLE McDONALD

### EMPLOYMENT AGREEMENT

This Memorandum sets forth the terms, conditions, and privileges of the employment agreement between the above-named Company and Employee, as follows:

#### 1. Term and Place of Service

Company hereby engages Employee and Employee hereby agrees to serve Company as a Boilermaker (or in such other capacity as Company may from time to time require) in Company's Zone of Operations for a period

of eighteen (18) months from the date Employee shall report for duty at Bahrein, Persian Gulf, Namely, ..... As herein used "Zone of Operations" is understood to mean Bahrein, Persian Gulf, and any other locality around the Persian Gulf, to which Employee may be transferred for service.

## 2. Out Passage

Employee departed from Los Angeles, California, on April 24, 1944. Employee was furnished transportation from Los Angeles, California, hereinafter referred to as Employee's Home, to Bahrein, and a Travel Allowance in the sum of \$30.00) Thirty Dollars for which Employee shall render an Expense Account.

## 3. Salary

Company agrees, commencing on the 3rd day of May, 1944, to pay Employee a salary at the rate of Four Hundred Fifty Dollars (\$450.00) per month on the basis of 52 hours work per week. All work in excess of 52 hours per work week or in excess of 10 hours per day shall be considered overtime and payable on a straight time basis with the exception that said overtime provision will not apply to time spent in travel hereunder.

## 4. Meals and Sleeping Accommodation

While Employee is at Bahrein, Persian Gulf, Company shall furnish him free meals and sleeping accommodations through available facilities which Employee shall be required to accept and utilize. [8]

## 5. Industrial Injury

In the event Employee shall suffer injury (which term shall include occupational diseases and death proximately



caused by such injury) arising out of and in the course of employment hereunder, irrespective of negligence on the part of either the Employee or Company, Company shall voluntarily pay Employee or his dependents compensation as determined and measured by the standards of the Workmen's Compensation Act of the State of California, U. S. A. Such compensation shall be in lieu of any other liability of the company to the Employee or his dependents. Company is hereby subrogated, up *the* the amount of compensation paid, to any right of action or damages which Employee or his representative may have or recover in the future against or from any third party liable for an injury in consequence of which Company has paid compensation.

#### 6. Conduct of Employee

Employee hereby undertakes and agrees: To comply with and abide by all general regulations and instructions from time to time issued by Company, or by The Bahrein Petroleum Company Limited, including those governing hours and conditions of work, and to obey all lawful orders given by the company, its Manager, or other duly authorized person or persons.

To conduct himself at all times in such a manner as not to bring discredit upon himself or Company and to abide by all laws of the country and locality in which he is working. Employee shall not engage, directly or indirectly, in any other employment, service or business whatever, nor shall he take part in local politics. Employee shall not, during the term of this Agreement or thereafter, impart any information relative to the business or affairs of the Company to anyone except to those employees of the Company who are entitled to receive such

information. If Employee shall absent himself from his work or duties without permission, he shall not be entitled to any wages or salary or to any allowance [9] whatsoever for such day or days of absence.

#### 7. Inoculations and Vaccinations

Employee agrees to receive at his own risk and at the expense of the Company, and at the time and from the Doctor or Doctors designated by the Company, such inoculations, vaccinations and examinations as shall be specified by Company.

#### 8. Marital Status

Employee hereby states that he is single.

~~married.~~

#### 9. Termination by Company or Employee

(a) Either Company or Employee may terminate Employee's service hereunder at any time by giving one to the other previous written notice of intention so to do. The minimum period of said notice shall be one month.

(b) Alternatively at its discretion Company may terminate Employee's service hereunder at any time without previous notice upon payment to Employee of a sum of money equivalent to salary for the required period of notice.

#### 10. Termination by Company for Cause.

Company may summarily terminate Employee's service hereunder at any time for Cause, such as insubordination, intemperance, use of narcotics, venereal disease, self-injury wilfully inflicted; non-compliance with Company's Regulations or instructions, dishonesty, misconduct, inefficiency, or if Company is requested to dismiss Em-

ployee by any Government official or by any representative of the client of the Company.

### 11. Employee's Departure

Upon completion or in the event of termination of Employee's service hereunder, it is understood that Employee must depart from the Zone of Operations on the date specified by the Company.

### 12. Return Passage

(a) Upon completion of Employee's full term of service [10] hereunder as defined in 1, or upon prior termination thereof by Company for any reason other than Cause, or by Employee during any extension of said term of service as provided for in Paragraph 16, Company shall pay all necessary expenses of Employee's passage to his home of the class and by the route designated by the Company and pay Employee up to date on which Employee would ordinarily reach his Home traveling by the said route or up to the date of termination, whichever date is the later.

(b) In the event that Employee's service hereunder shall be terminated by the Company for Cause during the Employee's full term of service hereunder as defined in 1, or during any extension of such term of employment as provided for in 16, or by Employee prior to full term of service hereunder as defined in 1, Company shall be under no obligation to pay, or to contribute in any manner to the expenses of the Employee's passage to his Home nor to pay Employee any salary for the time consumed in returning thereto or for any other period beyond the date of such termination. Company may, at its discretion, purchase for Employee, at Employee's expense, tickets or vouchers good for Employee's return passage or any

portion thereof, and Company is hereby authorized to withhold and retain from any sums due from Company to Employee the amount necessary to cover the cost of any tickets or vouchers so purchased.

### 13. Inability to Perform

If Employee, for any reason, shall be or become unable to perform or shall be prevented from performing the services herein contracted for, the Employer shall have no obligation to continue payment of the salary or compensation, and expense allowance, or any part thereof as herein provided, except only in case of brief illness, or brief disability due to accident.

### 14. Currency and Exchange

Any amounts which may become due Employee from Company and [11] are authorized to be paid to Employee at Bahrein or which may become due Company from Employee shall be paid at the rate of exchange and in the currency that Company considers fair and equitable. Company will deposit to Employee's account in dollars in the United States such portion of Employee's salary as Employee directs in advance; provided Company shall not be liable after placing a check for the amount specified by Employee in an envelope duly stamped and addressed to the person or account specified by Employee and placing such envelope in the regular mails.

### 15. Inventions and Patents.

Company shall be entitled to the sole benefit and exclusive ownership of any inventions or improvements in plant, machinery, processes or other things used in the business of the Company which may be made or discovered by Employee while he is in the service of Company

and all patents for the same, and Employee shall do all acts necessary or required by Company to give effect to this paragraph.

#### 16. Extension of Agreement

If, upon the request or with the consent of Company, Employee continues in this employment beyond the period described in Paragraph 1, this Agreement shall remain in effect during continuance of such service.

#### 17. Burial Release

Employee hereby authorizes and directs Employer, in the event of death of said Employee while outside of the United States and during the term of this contract, to make such disposition as seems best under the circumstances prevailing at the time, of the person and personal effects of said Employee.

#### 18. Limitation of Terms

This contract embodies the whole agreement between the parties hereto and there are no inducements, promises, terms, conditions or obligations made or entered into by the Employer than *than* contained herein. [12]

#### 19. Home Address

Employee hereby authorizes and directs Employer in the event of accident or emergency to notify Mrs. Myrtle McDonald (mother) at General Delivery, Joplin, Missouri. This address may be considered Employee's permanent home address, or the address of the person with whom Employer may communicate concerning personal matters relating to Employee. Employee hereby authorizes and directs Employer to.....

The foregoing provisions are understood and agreed to by the undersigned.

Doyle McDonald  
Co. CONST. BECHTEL-McCONE-  
PARSONS S. A.  
By J. R. McAuliffe

Date and Place of Signing.

Bahrein Island

May 28, 1944

es. [13]

[Verified.] [14]

[Title of Superior Court and Cause.]

### CERTIFICATE FOR ASSIGNMENT AND TRANSFER

This is to certify that the above entitled action is entitled to be transferred to the Long Beach, Department of the Superior Court of Los Angeles County, as provided in Section Two, Subdivision "B", Rule 30 of this Court, for the following reason: The action, or some part thereof, arose within the territory of the Long Beach Department.

DOYLE McDONALD

Plaintiff

[Verified.]

[Endorsed]: Filed Apr. 13, 1945, L. B. Superior Court. [15]

[Title of Superior Court and Cause.]

NOTICE OF FILING OF PETITION AND BOND  
FOR REMOVAL TO UNITED STATES DIS-  
TRICT COURT

To Doyle McDonald, plaintiff above named, and to Rus-  
sell H. Pray and Edward W. Sheridan, his attorneys:

Please Take Notice that on Tuesday May 15, 1945, at  
the hour of 2:45 o'clock P. M., or as soon thereafter as  
counsel may be heard, Bechtel-McCone Corporation, a  
corporation (sued herein as Bechtel-McCone-Parsons Cor-  
poration, a corporation) will present to the above entitled  
court in Long Beach, Department C thereof, located in  
the Jergins Trust Building, 100 East Ocean Boulevard,  
Long Beach, California, its petition and bond, true copies  
of which are hereunto attached, for removal of the  
above [16] entitled action to the District Court of the  
United States for the Southern District of California,  
Central Division, and that said defendant will at said  
time and place apply for an order removing said cause  
to said District Court in form as per copy hereunto at-  
tached and

You Will Also Further Please Take Notice that said  
defendant Bechtel-McCone Corporation will immediately  
thereafter file said petition and bond with the clerk of the  
above entitled court.

Dated: May 15, 1945.

O'MELVENY & MYERS,  
By Leo A. Deegan  
JACKSON W. CHANCE,

Attorneys for Defendant Bechtel-McCone Corporation,  
a corporation.

[Note: The Petition and Bond attached to this Notice of Filing are the same as the Petition for Removal of Cause to United States District Court for the Southern District of California. Central Division, and Bond, appearing at pages 16 and 21 respectively of the Transcript of Record so are not repeated at this point.]

[Endorsed]: Filed May 15, 1945. L. B. Superior Court. [17]

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[Title of Superior Court and Cause.]

PETITION FOR REMOVAL OF CAUSE TO  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF  
CALIFORNIA, CENTRAL DIVISION

The verified petition of Bechtel-McCone Corporation, a corporation (sued herein as Bechtel-McCone-Parsons Corporation, a corporation), one of the defendants in the above entitled action, respectively shows:

1. Plaintiff was at the time of the commencement of the above entitled action and now is a citizen and resident of the State of California.

2. Defendant and petitioner Bechtel-McCone Corporation was at the time of the commencement of the above entitled action and now is a corporation duly organized and existing under the laws of the State of Nevada and was at said time and now is a [18] citizen and resident of the State of Nevada. At the time of the execution of the contracts sued upon in the above entitled action the correct corporate name of petitioner was Bechtel-McCone-Parsons Corporation. Subsequent to the execution



of said contracts and prior to the commencement of the above entitled action petitioner's corporate name was changed to Bechtel-McCone Corporation.

3. Defendant Compania Constructora Bechtel-McCone, S. A. (sued herein as Compania Constructora Bechtel-McCone-Parsons, S. A., a corporation) was at the time of the commencement of the above entitled action and now is a corporation duly organized and existing under the laws of the Republic of Venezuela and was at said time and now is a citizen and resident of the Republic of Venezuela. At the time of the commencement of the above entitled action Compania Constructora Bechtel-McCone-Parsons, S. A., was the true corporate name of the defendant sued herein under that name. Since the execution of said contracts and prior to the filing of the above entitled action said defendant has changed its corporate name to Compania Constructora Bechtel-McCone, S. A.

4. Defendants Doe One Company, a corporation, Doe Two Company, a co-partnership, Doe Three, Doe Four and Doe Five are purely fictitious defendants having no real existence. It affirmatively appears from the face of the complaint on file herein that no cause of action is stated against said fictitious defendants, that there are no persons other than petitioner and defendant Compania Constructora Bechtel-McCone, S. A., necessary or proper to be joined as defendants in order to grant complete relief and that there are no persons other than plaintiff and petitioner and said Compania Constructora Bechtel-McCone, S. A., [19] having any relationship to or interest in the purported cause of action sued upon.

5. The above entitled action was commenced on April 13, 1945 in the Superior Court of the State of California in and for the County of Los Angeles and involves a controversy between plaintiff, who is a citizen and resident of the State of California, on one side, and petitioner, which is a citizen and resident of the State of Nevada and defendant Compania Constructora Bechtel-McCone, S. A., which is a citizen and resident of the Republic of Venezuela, on the other side. By the complaint in said action plaintiff seeks recovery of the sum of \$4,015 as damages for the alleged breach of an employment contract. The matter in controversy in said action exceeds the sum of \$3,000, exclusive of interest and costs.

6. The time for petitioner as defendant in said action to appear, answer or otherwise plead to plaintiff's complaint therein has not expired. The summons and complaint in said action was served on petitioner in the City and County of San Francisco, State of California, on April 18, 1945, and the time within which said petitioner as such defendant is required to appear, answer or otherwise plead to plaintiff's complaint will not expire until and including May 18, 1945.

7. Summons and complaint in said action has not been served upon defendant Compania Constructora Bechtel-McCone, S. A., a corporation. Said defendant is not doing and never has done business in the State of California.

8. Petitioner presents a good and sufficient bond as provided by statute in such cases, which bond is in the penal sum of \$1,000 and is conditioned upon the entry

in the District Court of the United States for the Southern District of California, Central Division, within 30 days of the filing of this petition of a certified copy of the record in the above entitled action and of the payment of all costs which may be awarded by said court if the court shall hold said action improperly removed thereto.

Wherefore, petitioner prays that this court make and enter its order

1. Approving the bond present herewith;
2. Removing the above entitled cause to the District Court of the United States for the Southern District of California, Central Division;
3. Directing that a transcript of the record herein be prepared by the Clerk of this Court to be filed with said District Court of the United States in manner and form as provided by law in such cases; and
4. Providing that all further proceedings in this case be stayed.

Dated: May 12th, 1945.

BECHTEL-McCONE CORPORATION

By J. D. Trimmell

Petitioner.

O'MELVENY & MYERS

By Jackson W. Chance

Attorneys for Petitioner [21]

## JOINDER IN PETITION

Compania Constructora Bechtel-McCone, S. A., a corporation, duly organized and existing under and by virtue of the laws of the Republic of Venezuela, and a citizen and resident of said Republic of Venezuela, one of the defendants in the above-entitled action (sued therein as Compania Constructora Bechtel-McCone-Parsons, S. A.) joins in the foregoing petition of Bechtel-McCone Corporation, a corporation, and consents to and joins in the petitioner's prayer therein.

COMPANIA CONSTRUCTORA BECHTEL-  
McCONE, S. A., a corporation

By O'MELVENY & MYERS

and

JACKSON W. CHANCE

Its Attorneys [22]

[Verified.] [23]

[Endorsed]: Filed May 15, 1945, Long Beach. [24]

[Title of Superior Court and Cause.]

### BOND ON REMOVAL

Know All Men By These Presents:

That the National Surety Corporation, a corporation, as Surety, is held and firmly bound unto Doyle McDonald, plaintiff in the above entitled action, his legal representatives, successors and assigns, in the sum of one thousand dollars (\$1,000) lawful money of the United States of America, for the payment of which, well and truly to be made, it binds itself, its successors and assigns, as the case may be, jointly and severally, firmly by these presents.

The Condition of the Above Obligation Is Such That:

Whereas, Bechtel-McCone Corporation, a corporation, one of the defendants in the above entitled action (sued therein as Bechtel-McCone-Parsons Corporation, a corporation) has filed, or is about to file its petition in the Superior Court of the State of California in and for the County of Los Angeles, for the removal of the above entitled action therein pending, to the United States District for the Southern District of California, Central Division, and Compania Constructora Bechtel-McCone, S. A., a corporation, (sued therein as Compania Constructora Bechtel-McCone-Parsons, S. A., a corporation), has joined in said petition for removal;

Now, Therefore, if Bechtel-McCone Corporation, a corporation- [25] tion, one of the defendants above named, shall within thirty (30) days from and after the date of the filing of said petition enter in said District Court of the United States of America a duly certified copy of the record in the above entitled action, and shall pay or cause

to be paid all costs that may be awarded therein by the District Court of the United States if such Court shall hold that such action was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise to remain in full force and effect.

Dated this 14th day of May, A. D. 1945.

(Seal) NATIONAL SURETY CORPORATION

By H. Everett Charlton

Attorney-in-Fact

The premium charged for this bond is \$10.00 for the term thereof.

The foregoing bond on removal is hereby approved as to form and sufficiency of Surety, this 15th day of May, 1945.

H. C. SHEPHERD

Court Commissioner of Los Angeles County

State of California, County of Los Angeles—ss.

On this 14th day of May in the year one thousand nine hundred and 45, before me Elsie M. Radoy, a Notary Public in and for said County and State, residing therein duly commissioned and sworn, personally appeared H. Everett Charlton, known to me to be the duly authorized attorney in fact of National Surety Corporation, and the same person whose name is subscribed to the within instrument as the Attorney in Fact of said Corporation, and the said H. Everett Charlton acknowledged to me that he subscribed the name of National Surety Corporation thereto as principal, and his own name as Attorney in Fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first [25-A] above written.

(Seal)

ELSIE M. RADOY

Notary Public in and for said County and State.

My Commission Expires August 26, 1946.

[Endorsed]: Filed May 15, 1945, Long Beach. [25-B]

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[Title of Superior Court and Cause.]

## ORDER REMOVING CAUSE TO UNITED STATES DISTRICT COURT

This cause came on for hearing upon the petition of defendant Bechtel-McCone Corporation, a corporation, consented to and joined in by defendant Compania Constructora Bechtel-McCone, S. A., a corporation, for an order removing this cause to the District Court of the United States for the Southern District of California, Central Division, and it appearing to this court that said defendant has filed its petition for such removal in due form and within the time required and that said defendant has filed a bond duly conditioned as provided by law; and it being shown to the court that written notice of the presentment of and [26] the filing of said petition and bond has, prior to the filing thereof been regularly served upon plaintiff herein, and it appearing to this court that

this is a proper case for removal to the United States District Court,

Now, Therefore, It Is Ordered:

1. That said bond be and the same is hereby approved;
2. That the above entitled action be and the same is hereby removed to the District Court of the United States for the Southern District of California, Central Division;
3. That the clerk of this court be and he is hereby directed to prepare and certify a copy of the record in this action for filing in said District Court of the United States; and
4. That all further proceedings in this matter be and they are hereby stayed.

Dated: May 15, 1945.

PERCY HIGHT

Judge of the Superior Court.

[Endorsed]: Filed May 15, 1945, Long Beach. [27]



No. LB C-12284

State of California, County of Los Angeles—ss.

I, J. F. Moroney, County Clerk and Clerk of the Superior Court in and for the County and State aforesaid, do hereby certify the foregoing copies of documents consisting of the Complaint including Certificate for Assignment and Transfer to Long Beach, Demurrer of Defendants Compania Constructora Bechtel-McCone, S. A., a corporation and Bechtel-McCone Corporation, a corporation, Notice of filing of Petition for removal including copy of Petition for removal, copy of certain bond on removal, and copy of order removing cause to United States District Court, Petition for Removal, Bond on Removal, Minute Order of May 15, 1945 granting petition for removal, and Order for Removal to the United States District Court, Southern District of California (Central Division) in the action of Doyle McDonald vs. Bechtel-McCone-Parsons Corporation, a corporation, et al., to be a full, true and correct copy of all of the original documents on file and/or of record in this office in the above entitled action to date, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Superior Court this 6th day of June, 1945.

(Seal)

J. F. MORONEY

County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles,

By E. Morris,

Deputy. [28]

[Endorsed]: Filed Jun. 14, 1945. No. 4549-O'C.  
Copy complaint and demurrer received. [29]

In the District Court of the United States  
Southern District of California  
Central Division  
No. 4549-O'C

DOYLE McDONALD,

Plaintiff,

vs.

BECHTEL-McCONE-PARSONS CORPORATION,  
a corporation, COMPANIA CONSTRUCTORA  
BECHTEL-McCONE-PARSONS S. A., a corpora-  
tion, DOE ONE COMPANY, a corporation, DOE  
TWO COMPANY, a copartnership, DOE THREE,  
DOE FOUR and DOE FIVE,

Defendants.

ANSWER OF DEFENDANTS COMPANIA CON-  
STRUCTORA BECHTEL-McCONE, S. A., a cor-  
poration, and BECHTEL-McCONE CORPORA-  
TION, a corporation, and COUNTERCLAIM

Bechtel-McCone Corporation, a corporation, organized and existing under the laws of the State of Nevada (sued herein as Bechtel-McCone-Parsons Corporation, a corporation), and Compania Constructora Bechtel-McCone, S. A., a corporation, organized and existing under the laws of the Republic of Venezuela (sued herein as Compania Constructora Bechtel-McCone-Parsons, S. A., a corporation), which latter corporation is not doing and never has done any business in the State of California and has not been and cannot be served in said State, but which corpora- [30] tion voluntarily appears herein for the sole purpose of defending this action on the merits and each of them, each for itself alone and for no other de-

defendant, for answer to the complaint on file herein admit, deny and allege as follows:

1. Answering Paragraph I admit that defendant Bechtel-McCone Corporation (sued herein as Bechtel-McCone-Parsons Corporation) is a Nevada corporation duly qualified to do and doing business in the State of California.

2. Answering Paragraph II admit and allege that defendant Compania Constructora Bechtel-McCone, S. A. (sued herein as Compania Constructora Bechtel-McCone-Parsons, S. A., and referred to in said paragraph as Bechtel-McCone-Parsons, S. A.) is a corporation organized and existing under the laws of the Republic of Venezuela; but deny that said defendant is now doing or that it ever has done business in the State of California either by or through defendant Bechtel-McCone Corporation as agent, or otherwise, or in any other manner whatsoever.

3. Deny the allegations and each of them contained in Paragraph III.

4. Answering Paragraph IV admit that on April 4, 1944, plaintiff and defendant Bechtel-McCone Corporation entered into a written temporary employment agreement and that a true copy of said agreement is attached to the complaint on file herein; admit that on or about May 28, 1944, plaintiff and defendant Compania Constructora Bechtel-McCone, S. A., entered into an employment agreement and that a true copy thereof is attached to the com-[31] plaint on file herein; and allege that the rights and obligations of the respective parties to said respective contracts are as therein set forth and not otherwise. Except as hereinabove expressly admitted, deny each and every allegation contained in said Paragraph IV.

5. Deny the allegations and each of them contained in Paragraphs V, VI and VII, and further deny that plaintiff has been damaged in any sum, or at all.

As and for Its Counterclaim Herein, Defendant Compania Constructora Bechtel-McCone, S. A., a Corporation, Alleges as Follows:

1. Within two years last past, plaintiff Doyle McDonald became and now is indebted to Compania Constructora Bechtel-McCone, S. A., a corporation, in the sum of \$181.36.

2. No part of said sum of \$181.36 has been paid by or on behalf of plaintiff Doyle McDonald to said defendant Compania Constructora Bechtel-McCone, S. A., and the whole thereof, together with interest at the legal rate thereon is now due, owing and unpaid.

Wherefore, defendants and each of them pray that plaintiff take nothing herein; that defendant Compania Constructora Bechtel-McCone, S. A., have and recover judgment of and from plaintiff Doyle McDonald in the sum of \$181.36; that defendants and each of them recover their costs of suit incurred herein, and for such other and further relief as may be proper.

O'MELVENY & MYERS  
JACKSON W. CHANCE  
LEO A. DEEGAN

By Jackson W. Chance

Attorneys for Defendants, Bechtel-McCone Corporation  
and Compania Constructora Bechtel-McCone,  
S. A. [32]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun. 19, 1945. [34]

[Title of District Court and Cause.]

## ANSWER TO COUNTER-CLAIM

Comes now the plaintiff and for answer to the defendants' Counter-Claim herein, admits, denies and alleges as follows:

### I.

Answering Paragraph I of the defendants' Counter-Claim herein, plaintiff denies each and every allegation therein contained.

### II.

Answering Paragraph II of the defendants' Counter-Claim herein, plaintiff denies each and every allegation therein contained.

Wherefore, plaintiff prays that defendants take nothing herein and that plaintiff be rendered judgment in the amount prayed in the complaint herein, for his costs of suit herein [35] incurred, and for such other and further relief as may be proper.

RUSSELL H. PRAY—E. W. SHERIDAN

Attorneys for Plaintiff [36]

[Affidavit of Service by Mail.] [37]

[Verified.]

[Endorsed]: Filed Jun. 27, 1945. [38]

[Title of District Court and Cause.]

STIPULATION RE FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

It Is Hereby Stipulated by and between the parties to the above entitled action, through their respective counsel, that the decision of the court announced from the bench on Tuesday, October 9, 1945, as taken down by the stenographic reporter shall be deemed to be and constitute the findings of fact and conclusions of law in said action and that the reporter's transcript of said oral decision shall, when transcribed (subject to correction of any typographical or other errors contained in the reporter's transcript) constitute the findings of fact and conclusions of law of the court without necessity for a separate statement thereof [68] and without necessity for the court signing the same. A judgment shall be prepared by counsel for plaintiff and presented to the court pursuant to rule of court in accordance with said oral decision. This stipulation shall be without prejudice to the right of either party to urge error in the findings, conclusions, judgment or otherwise.

Dated: October 12th, 1945.

RUSSELL H. PREY

E. W. SHERIDAN

By E. W. Sheridan

Attorneys for Plaintiff

O'MELVENY & MYERS

JACKSON W. CHANCE, and

LEO A. DEEGAN

By Leo A. Deegan

Attorneys for Defendants

It is so ordered October 18, 1945

CHARLES H. LEAVY

Judge

[Endorsed]: Filed Oct. 18, 1945. [69]

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In the District Court of the United States in and for the  
Southern District of California

Central Division

No. 4549-O'C.

DOYLE McDONALD,

Plaintiff,

vs.

BECHTEL-McCONE-PARSONS CORPORATION,  
a corporation, et al.,

Defendants.

### JUDGMENT

The above entitled cause came on for trial on the 1st day of October, 1945, and for further hearing and final argument on the 9th day of October, 1945, before the Court, sitting without a jury, counsel appearing on behalf of each of the parties, and the Court having heard the evidence and fully considered the law and facts, and having filed herein its Findings of Fact and Conclusions of Law, and having directed that judgment be entered in accordance therewith; Now, Therefore, by reason of the law and findings aforesaid,

It Is Hereby Ordered, Adjudged and Decreed:

1. That plaintiff have judgment against the defendant Compania Constructora Bechtel-McCone, S. A., in the sum of eight [70] hundred fifty-two and ninety-two hundredths dollars (\$852.92).

2. That plaintiff have judgment against the defendant Compania Constructora Bechtel-McCone, S. A., for his costs herein in the amount of ..... (\$60.55).

Dated this 18 day of October, 1945.

CHARLES H. LEAVY  
Judge of United States District Court.

Approved as to form as required by local Rule 7.

O'MELVENY & MYERS  
JACKSON W. CHANCE, and  
LEO A. DEEGAN

By Leo A. Deegan  
Attorneys for Defendants

Judgment entered Oct. 18, 1945. Docketed Oct. 18, 1945, Book C. O. 35, page 309. Edmund L. Smith, Clerk; by Murray E. Wire, Deputy.

[Entered]: Filed Oct. 18, 1945. [71]



[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that Compania Constructora Bechtel-McCone, S. A., a corporation, one of the defendants in the above entitled action, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment in said action entered in this Court on October 19, 1945.

Dated: November 23, 1945.

O'MELVENY & MYERS  
JACKSON W. CHANCE  
LEO A. DEEGAN

By Leo A. Deegan

Attorneys for Defendant

[Endorsed]: Filed & mld. copy to R. H. Pray & E. W. Sheridan, Attys. for plf. Nov. 23, 1945. [72]

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[Title of District Court and Cause.]

### STIPULATION FOR ORDER FOR DEPOSIT OF MONEY IN LIEU OF SUPERSEDEAS BOND

It Is Hereby Stipulated by and between plaintiff, Doyle McDonald, and defendant, Compania Constructora Bechtel-McCone, S. A., through their respective attorneys of record for said parties, that an order in the form hereto attached, if the same meets with the approval of the

above entitled Court, may be forthwith entered and plaintiff hereby waives notice of hearing on the application for said order.

Dated: November 19, 1945.

RUSSELL H. PRAY and  
E. W. SHERIDAN

By E. W. Sheridan

Attorneys for Plaintiff [73]

O'MELVENY & MYERS  
JACKSON W. CHANCE  
LEO A. DEEGAN

By Leo A. Deegan

Attorneys for Said Defendant [74]

[Title of District Court and Cause.]

#### ORDER FOR DEPOSIT OF MONEY IN LIEU OF SUPERSEDEAS BOND

It appearing to the satisfaction of the Court that judgment in the above entitled action was duly entered on October 18, 1945, in favor of plaintiff, Doyle McDonald, and against defendant, Compania Constructora Bechtel-McCone, S. A., for the recovery of \$852.92, together with costs heretofore taxed in the amount of \$60.55; and

It further appearing that said defendant Compania Constructora Bechtel-McCone, S. A. has concurrently with the entry of this order filed its notice of appeal from said judgment to the United States Circuit Court of Appeals for the [75] Ninth Circuit; and

It further appearing that said defendant Compania Constructora Bechtel-McCone, S. A. has, concurrently with the entry of this order, deposited with the Clerk of this Court the sum of \$1300 in lieu of the supersedeas bond provided for under Rule 73d of the Federal Rules of Civil Procedure; and

It further appearing that the amount so deposited is sufficient to secure payment of the whole amount of said judgment together with the costs of said appeal and interest on said judgment;

Now, Therefore, It Is Hereby Ordered that said deposit of \$1300 be held by said Clerk in lieu of the supersedeas bond provided for under Rule 73d of the Federal Rules of Civil Procedure and that no further proceedings be taken herein with reference to the collection of said judgment or issuance of execution thereon until the final hearing and decision on said appeal and the return of the mandate thereon; and

It Is Further Ordered that if said judgment is reversed on appeal or if said defendant shall fully satisfy said judgment or such modification thereof as may be made, together with interest and costs on appeal if the same is affirmed, then the Clerk of this Court shall return said sum of \$1300 to said defendant Compania Constructora Bechtel-McCone, S. A.; otherwise said Clerk shall continue to hold said sum on deposit subject to such further order with reference to satisfying the liability of said defendant therefrom as may be proper.

Dated: November 23, 1945.

J. F. T. O'CONNOR  
Judge

[Endorsed]: Filed Nov. 23, 1945. [76]

[Title of District Court and Cause.]

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 79 inclusive contain full, true and correct copies of Complaint; Notice of Filing of Petition and Bond for Removal to United States District Court except copies of Petition and Bond; Petition for Removal of Cause to United States District Court for the Southern District of California, Central Division; Bond on Removal; Order Removing Cause to United States District Court; Certificate of Clerk of the Superior Court to Removal Papers; Answer of Defendants Compania Constructora Bechtel-McCone, S. A. and Bechtel-McCone Corporation and Counterclaim; Answer to Counterclaim; Memorandum of Facts and Law; Defendants' Statement of Facts and Summary of Points of Law Involved; Plaintiff's Exhibits 1 to 7 inclusive; Defendants' Exhibits A and B; Stipulation re Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Stipulation and Order for Deposit of Money in Lieu of Supersedeas Bond; and Designation of Contents of Record on Appeal which, together with copy of two volumes of Reporter's Transcript, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$24.95 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 29 day of December, 1945.

(Seal)

EDMUND L. SMITH, Clerk,

By Theodore Hocke,

Chief Deputy Clerk.

[Title of District Court and Cause.]

Honorable Charles H. Leavy, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, October 1, 1945

Appearances:

For the Plaintiff: Russell H. Pray, Esq. and Edward W. Sheridan, Esq., by Edward W. Sheridan, Esq., 720 Security Building, Long Beach, California.

For the Defendants: O'Melveny & Myers, Esq., by Jackson W. Chance, Esq., 900 Title Insurance Building, Los Angeles, California.

Los Angeles, California, Monday, October 1, 1945,  
11:00 A. M.

The Court: You may proceed, gentlemen.

Mr. Sheridan: Call Mr. McDonald, please.

DOYLE McDONALD,

the plaintiff, called as a witness by and in his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Doyle McDonald.

Direct Examination

By Mr. Sheridan:

Q. Mr. McDonald, what is your address?

A. 1235 Cedar Apartments, Long Beach, California.

Q. You are a resident of California, are you?

A. Yes.

(Testimony of Doyle McDonald)

Q. Mr. McDonald, what is your occupation or business.

A. Boilermaker. I have been a boilermaker, rigging construction, a welder, and a burner.

Q. Are you employed at the present time?

A. Yes, I am.

Q. Where are you employed?

A. United Concrete and Pipe, Steel Shipbuilding [4\*] Division.

Q. In what capacity are you employed?

A. Leadman in rigging.

Q. Now, Mr. McDonald, I show you what purports to be or what is called an employment agreement between Compania Constructora Bechtel-McCone, S.A.—

Mr. Chance: If it will save time I will stipulate the two documents are the documents in issue—the temporary employment agreement between Mr. McDonald and Bechtel-McCone Corporation, and the permanent employment agreement between Mr. McDonald and the defendant company, Constructor Bechtel-McCone, South America.

Mr. Sheridan: I will accept the stipulation and offer first the temporary contract into evidence to be marked Plaintiff's Exhibit 1. The temporary contract is dated April 4, 1944, and signed by Doyle McDonald on that date, and I will offer it in evidence.

Exhibit 2 is denomination as the permanent employment agreement signed on May 28, 1944, by Doyle McDonald and countersigned for the company by J. Roy McCall.

The Court: They will be admitted in evidence.

\*Page numbering appearing at top of page of original Reporter's Transcript.

(The documents referred to were marked as Plaintiff's Exhibit No. 1 and No. 2, respectively, and were received in evidence.)

[PLAINTIFF'S EXHIBIT NO. 1]

Bah. D-4

JCB:ms

8-18-43

**SALARY ALLOTMENT—BAHREIN EMPLOYEES**

Bechtel-McCone-Parsons Corporation

Acting Under and Pursuant to Sub-Contract

With Compania Constructora Bechtel-McCone-

Parsons S. A.

570 Mills Building

San Francisco, 4, California

Employee Doyle McDonald

Gentlemen:

Starting with salary payable on April 20th, 1944, and thereafter until terminated or amended by written notice, you are hereby authorized to make the following allotment of all salary payments due the undersigned under his Temporary Employment Agreement with Bechtel-McCone-Parsons Corporation, dated April 4th, 1944, and Permanent Employment Agreement with Compania Constructora Bechtel-McCone-Parsons-S. A.

<u>Item No.</u>	<u>Monthly Deductions</u>	<u>Amount</u>
1	Field Allotment to be paid at Bahrein	\$50.00 per month
2	.....	.....
	.....	.....
	.....	.....
	.....	.....

(Plaintiff's Exhibit No. 1)

3      Balance of Earnings to be  
         Deposited .....

In Farmers & Merchants Bank,  
American Avenue Branch, lo-  
cated at 1401 American Ave-  
nue, Long Beach, California,  
to the credit of Savings Ac-  
count Number 10335 of Doyle  
McDonald.

.....

You are authorized to reply to inquiries in connection  
with my salary only to - - - -

Very truly yours,

Doyle McDonald

Dated at Los Angeles, California, this 4th day of  
April, 1944.

Approved:

Bechtel-McCone-Parsons Corporation  
Acting Under and Pursuant to Sub-  
Contract with Compania Constructora  
Bechtel-McCone-Parsons S. A.

By Wm. T. Dodson

Date April 4, 1944



(Plaintiff's Exhibit No. 1)

Bah. D-5

JCB:ms

9/1/43

[Written]: L.A. K. Colonel Jameson, Head of Personnel.

BECHTEL-McCONE-PARSONS CORPORATION

Engineers-Constructors

Mills Building, 220 Montgomery Street

San Francisco, 4, California

TEMPORARY EMPLOYMENT AGREEMENT

April 4, 1944

The undersigned, Bechtel-McCone-Parsons Corporation, has entered into a written agreement with Compania Constructora Bechtel-McCone-Parsons S. A. to engage persons in the United States who will render services for the latter Corporation which is the Construction Contractor under written agreement with The Bahrein Petroleum Company Limited to perform certain refinery construction work at Bahrein, Persian Gulf, and in the vicinity thereof.

It is understood that you are willing to enter into an employment agreement with said Construction Contractor to perform your services at Bahrein, Persian Gulf, and in the vicinity thereof, in accordance with the terms and conditions set forth in the attached contract.

Pursuant to the above mentioned agreement with Compania Constructora Bechtel-McCone-Parsons S. A. and contingent on your securing a passport and meeting our

(Plaintiff's Exhibit No. 1)

requirements of physical examination, we hereby engage you to proceed to Bahrein, Persian Gulf, at the salary and compensation, and upon the terms and conditions set forth in the attached contract, said salary hereunder to commence on the 20th day of April 1944. You are hereby assured that when you arrive at Bahrein, Persian Gulf, the attached contract will be duly executed by said Construction Contractor, and you hereby agree to execute the attached contract upon arrival at Bahrein, Persian Gulf, and thereupon your employment hereunder shall terminate and your employment by said Construction Contractor shall commence in accordance with the attached contract.

BECHTEL-McCONE-PARSONS CORPORATION

Acting Under and Pursuant to Sub-  
Contract With Compania Constructora  
Bechtel-McCone-Parsons S. A.

By: Wm. T. Dodson

Wm. T. Dodson

Ass't Foreign Employment Manager

I Accept the Foregoing This 4th Day of April, 1944.

Doyle McDonald

28

[Endorsed]: No. 4549-O'C. McDonald vs. Bechtel-McCone. Plfs. Exhibit No. 1. Filed Oct. 1, 1945. Edmund L. Smith, Clerk; by MEW, Deputy Clerk.

[PLAINTIFF'S EXHIBIT NO. 2]

COMPANIA CONSTRUCTORA  
BECHTEL-McCONE-PARSONS S. A.  
EMPLOYMENT AGREEMENT

DOYLE McDONALD

This Memorandum sets forth the terms, conditions and privileges of the employment agreement between the above-named Company and Employee, as follows:

1. Term and Place of Service

Company hereby engages Employee and Employee hereby agrees to serve Company as a Boilermaker, (or in such other capacity as Company may from time to time require) in Company's Zone of Operations for a period of eighteen (18) months from the date Employee shall report for duty at Bahrein, Persian Gulf, namely, .....

As herein used "Zone of Operations" is understood to mean Bahrein, Persian Gulf, and any other locality around the Persian Gulf to which Employee may be transferred for service.

2. Out Passage

Employee departed from Los Angeles, California, on April 24, 1944. Employee was furnished transportation from Los Angeles, California, hereinafter referred to as Employee's Home, to Bahrein and a Travel Allowance in the sum of (\$30.00) Thirty Dollars for which Employee shall render an Expense Account.

3. Salary

Company agrees, commencing on the 3rd day of May, 1944, to pay Employee a salary at the rate of Four Hundred Fifty Dollars (\$450.00) per month on the basis

(Plaintiff's Exhibit No. 2)

of 52 hours work per week. All work in excess of 52 hours per work week or in excess of 10 hours per day shall be considered overtime and payable on a straight time basis with the exception that said overtime provision will not apply to time spent in travel hereunder.

#### 4. Meals and Sleeping Accommodation

While Employee is at Bahrein, Persian Gulf, Company shall furnish him free meals and sleeping accommodations through available facilities which Employee shall be required to accept and utilize.

#### 5. Industrial Injury

In the event Employee shall suffer injury (which term shall include occupational diseases and death proximately caused by such injury) arising out of and in the course of employment hereunder, irrespective of negligence on the part of either the Employee or Company, Company shall voluntarily pay Employee or his dependents compensation as determined and measured by the standards of the Workmen's Compensation Act of the State of California, U. S. A. Such compensation shall be in lieu of any other liability of the Company to the Employee or his dependents. Company is hereby subrogated, up to the amount of compensation paid, to any right of action or damages which Employee or his representative may have or recover in the future against or from any third party liable for an injury in consequence of which Company has paid compensation.

#### 6. Conduct of Employee

Employee hereby undertakes and agrees: To comply with and abide by all general regulations and instructions from time to time issued by Company, or by The Bahrein

(Plaintiff's Exhibit No. 2)

Petroleum Company Limited, including those governing hours and conditions of work, and to obey all lawful orders given by the company, its Manager, or other duly authorized person or persons.

To conduct himself at all times in such a manner as not to bring discredit upon himself or Company and to abide by all laws of the country and locality in which he is working. Employee shall not engage, directly or indirectly, in any other employment, service or business whatever, nor shall he take part in local politics. Employee shall not, during the term of this Agreement or thereafter, impart any information relative to the business or affairs of the Company to anyone except to those employees of the Company who are entitled to receive such information. If Employee shall absent himself from his work or duties without permission, he shall not be entitled to any wages or salary or to any allowance whatsoever for such a day or days of absence.

#### 7. Inoculations and Vaccinations

Employee agrees to receive at his own risk and at the expense of the Company, and at the time and from the Doctor or Doctors designated by the Company, such inoculations, vaccinations and examinations as shall be specified by Company.

#### 8. Marital Status

Employee hereby states that he is single.  
~~married.~~

#### 9. Termination by Company or Employee

(a) Either Company or Employee may terminate Employee's service hereunder at any time by giving one to

(Plaintiff's Exhibit No. 2)

the other previous written notice of intention so to do. The minimum period of said notice shall be one month.

(b) Alternatively at its discretion Company may terminate Employee's service hereunder at any time without previous notice upon payment to Employee of a sum of money equivalent to salary for the required period of notice.

#### 10. Termination by Company for Cause

Company may summarily terminate Employee's service hereunder at any time for Cause, such as insubordination, intemperance, use of narcotics, venereal disease, self-injury wilfully inflicted; non-compliance with Company's regulations or instructions, dishonesty, misconduct, inefficiency, or if Company is requested to dismiss Employee by any Government official or by any representative of the client of the Company.

#### 11. Employee's Departure

Upon completion or in the event of termination of Employee's service hereunder, it is understood that Employee must depart from the Zone of Operations on the date specified by the Company.

#### 12. Return Passage

(a) Upon completion of Employee's full term of service hereunder as defined in 1, or upon prior termination thereof by Company for any reason other than Cause, or by Employee during any extension of said term of service as provided for in Paragraph 16, Company shall pay all necessary expenses of Employee's passage to his Home of the class and by the route designated by the Company and pay Employee up to date on which Employee would

(Plaintiff's Exhibit No. 2)

ordinarily reach his Home traveling by the said route or up to the date of termination, whichever date is the later.

(b) In the event that Employee's services hereunder shall be terminated by the Company for Cause during the Employee's full term of service hereunder as defined in 1, or during any extensions of such term of employment as provided for in 16, or by Employee prior to full term of service hereunder as defined in 1, Company shall be under no obligation to pay, or to contribute in any manner to the expenses of the Employee's passage to his Home nor to pay Employee any salary for the time consumed in returning thereto or for any other period beyond the date of such termination. Company may, at its discretion, purchase for Employee, at Employee's expense, tickets or vouchers good for Employee's return passage or any portion thereof, and Company is hereby authorized to withhold and retain from any sums due from Company to Employee the amount necessary to cover the cost of any tickets or vouchers so purchased.

### 13. Inability to Perform

If Employee, for any reason, shall be or become unable to perform or shall be prevented from performing the services herein contracted for, the Employer shall have no obligation to continue payment of the salary or compensation, and expense allowance, or any part thereof as herein provided, except only in case of brief illness, or brief disability due to accident.

### 14. Currency and Exchange

Any amounts which may become due Employee from Company and are authorized to be paid to Employee at

(Plaintiff's Exhibit No. 2)

Bahrein or which may become due Company from Employee shall be paid at the rate of exchange and in the currency that Company considers fair and equitable. Company will deposit to Employee's account in dollars in the United States such portion of Employee's salary as Employee directs in advance; provided Company shall not be liable after placing a check for the amount specified by Employee in an envelope duly stamped and addressed to the person or account specified by Employee and placing such envelope in the regular mails.

#### 15. Inventions and Patents

Company shall be entitled to the sole benefit and exclusive ownership of any inventions or improvements in plant, machinery, processes or other things used in the business of the Company which may be made or discovered by Employee while he is in the service of Company and all patents for the same, and Employee shall do all acts necessary or required by Company to give effect to this paragraph.

#### 16. Extension of Agreement

If, upon the request or with the consent of Company, Employee continues in this employment beyond the period described in Paragraph 1, this Agreement shall remain in effect during continuance of such service.

#### 17. Burial Release

Employee hereby authorizes and directs Employer, in the event of death of said Employee while outside of the United States and during the term of this contract, to make such disposition as seems best under the circumstances prevailing at the time, of the person and personal effects of said Employee.



(Plaintiff's Exhibit No. 2)

18. Limitation of Terms

This contract embodies the whole agreement between the parties hereto and there are no inducements, promises, terms, conditions or obligations made or entered into by the Employer other than contained herein.

19. Home address

Employee hereby authorizes and directs Employer in the event of accident or emergency to notify Mrs. Myrtle McDonald (mother) at General Delivery, Joplin, Missouri. This address may be considered Employee's permanent home address, or the address of the person with whom Employer may communicate concerning personal matters relating to Employee. Employee hereby authorizes and directs Employer to.....

.....

The foregoing provisions are understood and agreed to by the undersigned.

Doyle McDonald  
Co. Const. Bechtel-  
McCone-Parsons S. A.  
J. Roy McAuliffe

Date and Place of Signing.

Bahrein Island

May 28, 1944

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[Endorsed]: No. 4549-O'C. McDonald vs. Bechtel-McCone. Plfs. Exhibit No. 2. Filed Oct. 1, 1945. Edmund L. Smith, Clerk; by MEW, Deputy Clerk.

(Testimony of Doyle McDonald)

Q. By Mr. Sheridan: Now, Mr. McDonald, on the 4th of [5] April, 1944, you entered into the temporary employment contract, did you not? A. I did.

Q. And was that employment contract executed in Los Angeles? A. Yes, in Los Angeles.

Q. And you signed that agreement there?

A. I did.

Q. And what officer or what person signed the contract with you, if you know?

A. I believe it was a Mr. Dodson, assistant personnel manager.

Mr. Chance: I will stipulate it was signed by William T. Dodson, assistant employment manager of Bechtel-McCone Corporation.

Mr. Sheridan: The Nevada Corporation?

Mr. Chance: The Nevada corporation, yes.

Mr. Sheridan: So stipulated.

Q. Now, Mr. McDonald, after the 4th of April, 1944, and after the execution of this temporary employment contract had you agreed to work for the Bechtel-McCone South American corporation?

Mr. Chance: Object to that as calling for a conclusion of the witness. The contract speaks for itself. I will stipulate with you, counsel, the contract so provides. [6]

Mr. Sheridan: Very well.

Q. After the execution of the temporary employment agreement of April 4, 1944, what did you do, Mr. McDonald?

A. I think it was on approximately the fifth. We were told to return home and wait, and approximately on the fifth, I believe, we were told to be ready to entrain that evening for the East Coast.

(Testimony of Doyle McDonald)

We went by way of Chicago and down to Virginia to the port of embarkation. Then we stayed there for several days. We boarded a ship and went to Oran, Algiers, and then we stayed there for several days. We boarded a plane and went from Oran, Algiers, to Algiers, Algeria. I stayed there approximately one hour and boarded another plane and went to Cairo, Egypt. We stayed there two or three days and boarded another plane flying to Iraq. We stayed there over night because of a storm and the next morning and day we went to Bahrein Island.

Q. Now, Mr. McDonald, during the entire trip, after leaving Los Angeles and going across country to Virginia, and leaving Newport News by ship and taking your various plane trips to your arrival at Bahrein Island, were all of your expenses paid?

A. No, they were not exactly—not all of them.

Q. What part of your expenses, if you know, were not paid? [7]

A. At landing at Payne Field in Cairo, Egypt, we asked for food. We had been in the air approximately eight or nine hours and they said, "We will worry about that later," so all of us fellows went in and out of our own pocket we purchased our own food. The next morning when we got up they said food was not available so we went down to an English restaurant and purchased our own food.

Q. How much did you spend there yourself, personally?

A. It was in the percentage of pounds—Egyptian pounds. They called it one pound represented \$4.13. We spent approximately \$1.00 or \$1.50 at that one point for our own food.

(Testimony of Doyle McDonald)

Q. Did you have any other expenses which you paid personally?

A. We were supposed to go direct from Cairo, Egypt to Bahrein Island but there was a sand storm in progress. We couldn't make it through, so we landed at an English airport and stayed over night. The expenses for over night lodging and the food were paid by ourselves and from then on all our expenses were paid by the company.

Q. How much were your expenses for lodging?

A. That was in the Iraquian type of money which I didn't know the value of.

Q. Well, do you have any approximate idea how much it was? [8]

A. Roughly, I would say about \$1.50—maybe two or three dollars. I just couldn't say definitely. It couldn't have been much more than that.

Q. Well, do you remember on what date you arrived at Bahrein Island, Persia?

A. No, I definitely could not say offhand.

Mr. Chance: May we stipulate, counsel, it was May 28, 1944, when he arrived at Bahrein Island?

Mr. Sheridan: I don't know whether we can stipulate it was the 28th or not.

Mr. Chance: Or about that date.

Mr. Sheridan: Because the witness has testified he left America on the fifth, left Los Angeles on the fifth, and it takes approximately 30 days to arrive from here in Persia.

Mr. Chance: Just to clear that up. I do not want to interrupt, but to clear it up could we refresh his recollection by reference to the permanent employment agreement which records that he departed from Los Angeles—it is

(Testimony of Doyle McDonald)

in your exhibit to your complaint and in page 1 of the permanent employment agreement. It states:

“Employee departed from Los Angeles, Cal., on April 24, 1944.”

Mr. Sheridan: I will stipulate that the plaintiff departed from Los Angeles on the 24th day of April, 1944, [9] and that under the existing travel conditions he would arrive in Bahrein Island, Persia, on or about the 24th day of May and prior to the 28th day of May.

Mr. Chance: I think the records show he arrived on the 28th of May, if we could simply agree on that.

Mr. Sheridan: Very well, let the record show the arrival was on the 28th day of May, 1944.

The Court: Then there is no issue on the matter of when he went on the payroll at his monthly salary?

Mr. Sheridan: The contract shows that as May 3rd.

The Court: The temporary contract says April 20th.

Mr. Chance: The record will show he went on the temporary employment agreement with the defendant Bechtel-McCone Corporation on April 20, 1944. The salary under the temporary employment agreement commenced and then when he left the country he went on the payroll of the defendant company, South American Company, Compania Constructora Bechtel-McCone, South America, on May 3rd, 1944. I believe that was the actual date they departed from the East Coast at Newport News. It was the practice to place an employee on the payroll of the South American Company when they went on the boat, which was the construction company doing the job abroad and that his salary was continuous from April 20, 1944, through to the date of his termination. [10]

(Testimony of Doyle McDonald)

Mr. Sheridan: Yes.

Q. Mr. McDonald, on arrival at Bahrein Island what did you do?

A. We were taken by a guide or he was, I suppose, an assistant personnel manager, and we were taken around in a truck and shown to our various houses, and our equipment was taken with us and we were lodged there and told to report for work the following day, which I did.

Q. And after reporting for work on the following day did you continue to work for the defendant company?

A. Yes, up until I left.

Q. And, Mr. McDonald, between the 28th or 29th day of May and the date that you left what type of duties did you perform?

A. I performed what they would call a boilermaker, assembling a bubble tower and also as a boilermaker assembling a smokestack and in conjunction with those I performed as a welder and tacker and burner and lay-out man.

Q. But the capacity for which you had been hired specifically was boilermaker, was it not?

A. Yes, sir.

Mr. Chance: Object to that on the ground it calls for a conclusion of the witness.

Mr. Sheridan: The contract specifically states the plaintiff was employed as a boilermaker. [11]

Mr. Chance: May I point out that the permanent employment agreement on page 1, in Paragraph 1, states that:

"The Company hereby engages employee and employee hereby agrees to serve Company as a boilermaker (or in

(Testimony of Doyle McDonald)

such other capacity as Company may from time to time require)."

and so on. I believe the contract speaks for itself.

Mr. Sheridan: Well, that is what we are relying on.

The Court: He may testify as to what other capacities he worked in besides that of boilermaker.

Mr. Chance: I have no objection to his testifying what classification he actually worked in. My only objection was to the form of the question which, as I understand it, asked him what he was employed to perform. I think there is a difference there. The Company had the right to assign him to such duties in addition to boilermaking as it deemed proper. I don't think there is any issue on that.

Mr. Sheridan: There is no question of that. All I was wanting to do was clarify the fact that this man was hired as a boilermaker primarily, according to his contract.

The Court: Proceed.

Mr. Sheridan: And that was what he was doing.

Q. Now, Mr. McDonald, from the 28th day of May until the time you left Bahrein Island you stated that you worked on a bubble tower and on a smokestack? [12]

A. That is right.

Q. At the time of your arrival which of the jobs did you start on, the bubble tower or the smokestack?

A. I started to work on the bubble tower upon my arrival.

Q. Well, will you state to the court in your own words, Mr. McDonald, what you did with the bubble

(Testimony of Doyle McDonald)

tower and what type of work you were doing on it until you were transferred to the stack?

A. A bubble tower is an object prefabricated in sections of approximately 20 tons. It has a semblance to a large pipe 12 feet in diameter rising approximately 150 feet into the air. These sections are assembled horizontally on the ground, laying on wooden blocks and welded together and then the whole thing is taken to its site on rollers and hoisted into position with cranes. Our job was to weld up, fit up, fair up, true up the seams of the sections that were to be assembled.

Q. And that is what you were doing?

A. That was my first job on Bahrein Island.

Q. How many of these sections did you fit up and true up prior to your transfer to the smokestack?

A. We had approximately three of them finished and at the time I was forced to leave the job I was on the fourth section, I believe. [13]

Q. You state you were forced to leave the job. What do you mean by that?

A. I was told I was fired.

Mr. Chance: I object to that and ask that the answer be stricken on the ground we are entitled to know the persons present, the persons in the conversation and so on.

The Court: Objection will be overruled and exception allowed.

Q. By Mr. Sheridan: Now, Mr. McDonald, would you be able to delineate by a drawing approximately how these sections of pipe look? Would you step down to the board and draw the sections of the pipe so the court can see what we are talking about?

A. Assuming that the pipe was laying horizontally on the ground. This would be the ground. This would be



(Testimony of Doyle McDonald)

the pipe, 12 feet in diameter. There would be another section of pipe over here to join into this one. You would come to 1-16th when you had the pipes ready to be welded. There would be a one-sixteenth, approximately, width of that line all the way around.

Q. You mean a one-sixteenth of an inch?

A. One-sixteenth of an inch, yes. And then they must be tack-welded approximately every four feet. That would be production tack-welding and a certified welder should do that, but in the process of putting these together you have [14] to put wedges approximately, anywhere from 16 to 24 key plates on that to pull it together, which consumes approximately two and a half or two working days. Then after you do that and get it right and the inspector passes on it, you production weld approximately every four feet around there. A production weld covers approximately six to eight inches which will be three or four pounds of welding metal displaced from the rods into here in the process of welding.

After you have tack-welded you go back and true it up and see if it is directly straight and if it is straight then the production welders come in and finish welding the pipe together, which should take approximately two or 250 pounds of weld to complete it, and it takes two or three days to complete the weld because there are inspectors there and you are under strict surveillance from the inspectors and after one pass is made of a weld on there they must come in with air guns and drive that metal in the process of osmosis forcing it to release its grip and tension so it won't bring the pins out of alignment. The welding should and the fitting should be completed in approximately five days.

(Testimony of Doyle McDonald)

Q. Mr. McDonald, you state that these pipes were 12 feet in diameter. Is that true? A. That is right.

Q. And how much did each one of these sections weigh? A. Approximately 20 tons. [15]

Q. Now, how were these sections joined together prior to welding the sections?

A. They were joined together with key plates and wedges.

Q. Could you draw a key plate in order to make it more clear for the court when you mention those things?

A. I can draw a key plate on an exaggerated principle. Assuming that a flat plate was laid over that approximately 24 inches by 18—18 by 24. There was a hole burned out in here, in this key plate, and there was a hole burned out here and this had a riser, this key plate here proper, on this metal proper, it had a riser on it and a slight riser on this. Then we would weld a lug or they call them dogs onto here and from this riser here we would drift a wedge down through. And in this process the same over here. We would set two wedges tight in there and after we got it fit up we would keep continually pounding these wedges. The pressure against this dog, which was welded to the pipe and the pressure against this lug which was also welded on the key plate, forced these two to move one way or the other as you saw fit to make it fit up and it took a series of finishing and fitting up and fairing up to complete it. It took approximately anywhere from 18 to 24 to complete the job on the circumference.

Q. How many plates, key plates, do you have to attach [16] to that so you would be able to say that that

(Testimony of Doyle McDonald)

section of pipe had met with the other section for final welding?

A. For fitting up and final welding you would have to have anywhere from 18 to 24. That is to hold it so the inspector would pass on it and OK such procedure. For just holding it in place two would be enough temporarily—just to hold it, to keep it from falling apart over night; two key plates, one on each side, would hold it.

Q. That would be sufficient? A. Yes.

Q. Very well, you can resume the stand, Mr. McDonald.

Now, Mr. McDonald, you stated that you worked, when you first arrived on the bubble tower. After your arrival were you subsequently transferred to a smokestack?

A. Yes, I was.

Q. Approximately how long after you arrived were you transferred to work on the smokestack?

A. Approximately two weeks, I would say.

Q. How long did you work at the smokestack?

A. About two weeks, maybe three. I am not sure.

Q. And after that three-week period of working on the smokestack where, if any place, did you go?

A. I was transferred back to the bubble tower.

Q. Now, Mr. McDonald, during the time that you worked [17] from your arrival until you left Bahrein Island, who was your immediate foreman or superior?

A. My immediate foreman was a gentleman by the name of Tam.

Q. Now, during your work on the bubble tower and upon the smokestack was Mr. Tam your foreman on both jobs? A. He was.

(Testimony of Doyle McDonald)

Q. Was Mr. Tam the gentleman who assigned you to the bubble tower when you first arrived?

A. Yes, he was.

Q. Was Mr. Tam the person who sent you to the smokestack? A. He was.

Q. Was Mr. Tam the man who re-assigned you from the smokestack to the bubble tower?

A. Yes, he was.

Q. Now, Mr. McDonald, do you know or recall on what date you terminated your employment with the Bechtel-McCone Corporation, South America?

A. I believe it was the 10th of July.

Q. Of what year?

A. I couldn't say for sure. It was either 1943 or 1944. I am not sure.

Mr. Chance: We will stipulate it was in 1944.

Mr. Sheridan: Yes, I will accept that stipulation. [18]

Q. Mr. McDonald, will you state in your own words to the court what were the circumstances which led you to terminate your employment?

A. There had been—

Mr. Chance: Counsel, may I object and ask you to let him state who was present and so on and then we can follow along with him and make our record.

Mr. Sheridan: Yes.

Q. Mr. McDonald, will you tell the court in your own words what led up to the termination of your contract, and in your statement tell who was present at the time this conversation, if any, occurred between you and other members of the company. Tell who these persons were and what their names were, if you know.

A. We were in this one particular incident relating to my termination, we went to work rather early in the

(Testimony of Doyle McDonald)

morning and at two o'clock we had accumulated the amount of eight hours time, working time. We ate lunch at approximately, somewhere about 10 or 10:30. I would not say just exactly when, but approximately at the middle of the eight hours, but at two o'clock when the whistle blew all the boilermakers and their helpers, their assistants, left the job.

Now, the riggers came in an hour later than we did of that morning and worked one hour later than we did to get in their eight hours. They moved a large crane down there [19] the only one they had on the island of any size for heavy work, and—

The Court: What date was this? That wasn't July 10th, was it?

The Witness: No, sir. I think it was about, approximately July 9th, sir. I am not positive of the date but it is right in that vicinity. They moved the crane down there and a fellow came over and said Tam wanted me to work one hour overtime to put this bubble tower section in place.

Q. By Mr. Sheridan: Do you know the name of the man that gave you this information?

A. He was just a fellow that was working there. I didn't know his name.

Q. Very well.

A. Other than seeing him around the job. I went ahead and I didn't know whether to work because we had definite orders not to work overtime. It was intense heat and high humidity and very, very depressing and they didn't want us to work overtime either one hour or 15 minutes, or ten minutes, under any conditions for fear of physical exhaustion. So I went up to see Mr. Vessels, who was the only superintendent at the time, or foreman

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at the time, available, and he said, "Yes, go ahead." He said, "I will give you an OK to go ahead and work overtime." Slightly after our lunch period and about 10 o'clock in the morning I didn't see Mr. [20] Tam after that until 20 or 30 minutes after two o'clock—after the two o'clock whistle had blown. So, I was working on and I had secured it with key plates for an over night hanging and I had done all the work myself. The crane men do their work and I do my work with helpers but my helpers had gone home. That is the coolies or natives of that country. When the whistle blew they went home. They quit just like falling off of a job. Well, Tam came around the edge of the bubble tower. I had been swinging a 12-pound hammer against these key plates pulling this 20-ton section. The sweat was running down off me. I was soaking wet with sweat and I had been doing the work by myself and I had secured it and was about ready to go home. As far as the securing process was concerned, it was secured and that released the crane. He came around and he said, "Where in hell are the turnbuckles?" And I said, "Tam, we never could—we never have been able to use turnbuckles on this." I said, "It is a hopeless case, hopeless effort," and I said, "I have got it secured this way," and I said, "We can finish it in the morning, with key plates. It is up as close as we can get it." I said, "We can release the crane. It can go ahead with its other work." He said, "I told you to get some turnbuckles," and I said, "That was three or four days ago," and I said, "I am not exactly a pack horse or a mule. I sent my coolies after them and they couldn't [21] find them." I said, "I asked you several days ago to give me a truck so I could go down and haul up the turnbuckles and other equipment which we needed very bad."

(Testimony of Doyle McDonald)

So, one word led to another and I was rather hot and exhausted under the conditions of the weather and the work I was doing by myself, so he said, "You are fired." The only thing I knew to do was to hit the fellow offhand and I didn't do that. I intended to, but I didn't do it. So I went over to Mr. Einer, the inspector, and I said, "Mr. Einer, it has been a pleasure to work for you."

Q. Mr. McDonald, excuse me. Was Mr. Einer present when you had the conversation with Mr. Tam?

A. That is right.

Q. Who else was present besides Mr. Einer?

A. The riggers on the crane.

Q. Do you know the names of any of the riggers on the crane?      A. I do not.

Q. Were there any coolies present at that time?

A. There were no coolies present. They had all gone home when the whistle blew. This all occurred about 20 minutes after the whistle blew.

Q. Will you continue with your conversation with Mr. Einer?

Mr. Chance: May I inquire of the witness on voir dire [22] as to whether Mr. Tam was present, within hearing range, at the time this alleged conversation with Mr. Einer took place?

The Witness: He was standing approximately 15 feet away.

Mr. Chance: Then I object to the witness testifying to a conversation out of the presence of the defendant or any of the defendant's representatives. And may I ask the witness whether Mr. Einer was an employee of the construction company or an employee of the Bahrein Petroleum Company, Limited, the owner of the oil field?

(Testimony of Doyle McDonald)

Mr. Sheridan: You can answer that if you know, Mr. McDonald.

The Witness: I don't know definitely. I couldn't say.

Mr. Chance: He was the oil company's inspector, was he not?

The Witness: He was representing the inspection of the welding on the bubble tower. That is as far as I know.

The Court: The objection will be overruled.

Q. By Mr. Sheridan: Go ahead and state what your conversation with Mr. Einer was, Mr. McDonald.

A. I said, "It has been a pleasure to work for you. Mr. Einer." He was a swell fellow and we had gotten along beautifully all through the process of building the bubble tower, which was very intricate and very detailed and there [23] had never been a harsh word between us under any conditions.

Mr. Chance: I move to strike the late statement as being self-serving.

The Court: It probably is not relevant but it may stand. Proceed.

The Witness: There had never been a harsh word between us. So he said to me, he said, "What is the matter with Tam?" He said, "Can't he get away and leave people alone and let them do the work?" He said, "Doesn't he know when he is well off as a foreman?" I said, "I don't know." I said, "You heard the argument." I said, "At least you saw part of it." So I went over to wait for a bus to haul me back to Awali.

Q. By Mr. Sheridan: How far was Awali from the site where you and Mr. Tam had your conversation?

A. Approximately 7 or 8 miles.



(Testimony of Doyle McDonald)

Q. That was from the site of your work?

A. Yes.

Q. The Awali was the main camp where you lived?

A. That was the main camp.

Q. And boarded? A. Yes.

Q. Very well, continue.

A. Mr. Vessels came out and saw me there and he said, "Well, Mac, did you get the vessel fixed up?" And I said, [24] "I did." I said, "I got it secured and then I got fired," and I said, "Tam and I had a run-in," and I said, "It is one of those things that happen." I said, "He told me I was fired so I left the job." "Oh," he said, "Oh, no, that can't be." He seemed to be disappointed and he says, "Now, wait a minute." So we went to talking about the whole procedure and he said, "Well, we will see what we can do about it." He said—

The Court: What was Mr. Vessels' connection with the employer?

The Witness: Mr. Vessels was a sort of—at that time, at that particular time, sir, he was a sort of general consulting engineer.

The Court: Was he a superior of Mr. Tam?

Mr. Chance: I will stipulate with counsel that Harold Vessels was the Assistant Project Manager of the defendant company of South America and had authority in that regard.

The Court: And was superior to Tam?

Mr. Chance: Yes.

The Court: Proceed.

The Witness: He called Mr. McAuliffe, who was more or less coming into his office.

(Testimony of Doyle McDonald)

Q. By Mr. Sheridan: Will you state to the court who Mr. McAuliffe is?

A. Mr. McAuliffe was the superintendent of construction [25] for this corporation.

Mr. Chance: I will stipulate with counsel that Roy McAuliffe was the Project Manager of the defendant company, *Compania Constructora Bechtel-McCone*, South America, and in complete charge of the construction on Bahrein Island.

Mr. Sheridan: Very well, I will accept that stipulation.

Q. Continue with your conversation.

A. So, Mr. Vessels asked me to explain to Mr. McAuliffe, which I did, and I said, "Mr. McAuliffe, I came a long ways." I said, "I have been on foreign construction working here," and I said, "I don't want to lose my job." I said, "If I cannot work for him I would like to work with somebody else on the project and carry on." I said, "I don't think it is because of my ability. It is more or less a personal enmity." The best that I could see—

Q. You mean person enmity between yourself and Tam?

A. And Tam. And I said, "My work has spoke for itself which Mr. Vessels will verify," and he said, "That is right." He said, "He is a very good workman," and he said, "We need him and we need more like him."

Mr. McAuliffe said, "Very well, then, I will turn it over to Mr. Vessels and he can take care of it from here on." So Mr. Vessels the next morning reported to Mr. Gratz, I believe, about this conversation. I was only told it. I did [26] not hear it. So later on he said, "Well, wait now—"

(Testimony of Doyle McDonald)

Mr. Chance: Excuse me a moment. May we have the record show this was to whom and what?

Q. By Mr. Sheridan: You said Mr. Vessels said something to you? A. I beg your pardon?

Q. Did Mr. Vessels say something to you? What is this conversation you are talking about now, Mr. McDonald?

A. At the time Mr. Vessels and Mr. McAuliffe were together, Mr. McAuliffe told Mr. Vessels before me, he said, "Very well, I will turn it over to you, Mr. Vessels and you take care of it and clarify the situation." That meant work it out the best he could.

So Mr. Vessels went to Mr. Gratz. He was general foreman of the boilermakers. Mr. Vessels told me that and he said, "We haven't—"

Mr. Chance: Just a moment.

The Court: You cannot testify to what you did not hear him say.

Q. By Mr. Sheridan: Only tell what you heard, Mr. McDonald, in conversations that took place in your presence.

A. Yes, sir. So the next morning Mr. Vessels asked me to come back, and he said, "I don't want you to run off." I said, "It is not my intention to. I want to go to work somewhere else." He said, "Well, we will fix something up [27] sure."

The next morning I was out there and this Mr. Gratz came up to me. He was a general foreman of boilermakers, and he asked me, he said, "Why is it you go to the office when you have an argument?" He said, "Don't you know who your boss is?" And I said, "Well, I assumed that Tam and you were." He said, "Well, that is

(Testimony of Doyle McDonald)

not right to go to the office." I said, "I didn't go to the office." I said, "Mr. Vessels came out to me when I was standing in front of the office, where was the legal place for a bus stop that I could catch to Awali." So he went on kind of maliciously—

Mr. Chance: Just a moment. I object to that statement.

Q. By Mr. Sheridan: Just state the conversation.

A. He said, "It is a funny thing that you fellows can't find out who your bosses are and do your talking with them." I said, "I could do that and I am willing to, but," I said, "the thing came up where I couldn't help it." He said to me, he said, "Well, you are fired." He said, "You are not going to work anywhere else on this island." He said, "That is for damn sure." Those are the very words he said.

So Mr. Vessels came out later and he said, "Mac, go on out there and go to work, why don't you?" And I said, "I just got through talking to Mr. Gratz and he told me I was fired and through." [28]

Mr. Chance: Will you read the answer back, Mr. Reporter?

(Answer read.)

Q. By Mr. Sheridan: After you told Mr. Vessels that Mr. Gratz had told you you were fired and that you were through, what did Mr. Vessels respond?

A. He said, "I will probably have to see about it later but," he said, "as far as I know I can't go any further." I said, "Well, I am going back to camp." I went back to camp and the whole situation was rather perplexing so I went to bed immediately. I was asleep and Mr. Paine, the personnel manager, came down and woke me up. He said, "I have some papers here for you to sign." I asked him,

(Testimony of Doyle McDonald)

I said, "What are they?" And he said, "It is to get you off of the island and on your way back home." I said, "What about the slip, my termination?" He said, "Well, I will stipulate on that that you quit." He said, "You would like it that way much better, wouldn't you?" And I said, "You can't make it anything else but fired." I said, "A fellow is fired. He is fired and that is all there is to it." I said, "It is actually—it is more or less immaterial to me." I said, "I will sign the papers down in your office later." And after that it was just a matter of waiting for transportation out.

Q. Do you remember if you signed any papers stating [29] that you were resigning or that you had been fired or discharged?

A. I never signed anything to that extent that I recall.

Q. Well, subsequent to this conversation with Mr. Paine how long a time elapsed prior to your leaving Bahrain Island?

A. The time I talked to him? I must have left about two or three days after that. It was only a short period of time.

Q. By what means of transportation did you leave?

A. By the Air Transport Command from Bahrain Island to Albania and from there direct to Cairo.

Q. Now, Mr. McDonald, from the time that you had your last conversation with Mr. Vessels until the expiration of the two or three days prior to your leaving Bahrain Island, at any time did Mr. Vessels or any other agent in control of the company at Bahrain Island offer you a job with other crews, in any capacity on Bahrain Island?

A. They did not.

(Testimony of Doyle McDonald)

Q. Had you made any statements to Mr. McAuliffe or Mr. Vessels as to your intention to perform the contract and to work if they gave you a job?

A. I told Mr. McAuliffe I wanted to perform the contract, carry on and work for anybody else. He said, [30] "We have been transferring men up until recently, but," he said, "so many men have been trying to transfer away from the boilermakers that we are going to have to put a stop to it sometime, and we might as well start now." They had been having continual trouble.

Mr. Chance: Just a moment. I object to the last statement.

The Court: Yes, the last statement may go out.

Q. By Mr. Sheridan: Did Mr. McAuliffe promise to transfer you at all to any other job on Bahrein Island?

A. No, he did not.

Q. Did he offer to? A. No, he did not.

Q. Did any other company employee prior to your departure from Bahrein Island offer to transfer you to another job or to use you and utilize your services in some other employment? A. No, they did not.

The Court: I think we will adjourn for the noon intermission now. It is 12:00 o'clock and we shall adjourn until two o'clock this afternoon.

(Whereupon, at 12:00 o'clock noon, a recess was had until two o'clock p.m. of the same day.) [31]

Los Angeles, California, Monday, October 1, 1945

2:00 P.M.

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The Court: You may proceed, gentlemen.

Mr. Sheridan: Mr. McDonald, will you resume the stand, please?

DOYLE McDONALD,

called as a witness by and on behalf of the Plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Sheridan:

Q. Now, Mr. McDonald, going back to the altercation that you had with Tam on the date of July 9th, I believe. On that date will you state to the court what you had been ordered to do by Mr. Tam?

A. I had been ordered by Mr. Tam several days previously—I had not exactly been ordered. I suggested to Mr. Tam that we get the truck and move our equipment back to the bubble tower and Mr. Tam gave me—he said, “Well, take some of your coolies and go down and get the turnbuckles and the other equipment and bring it back.” He said, “You don’t need a truck for that.” I said, “That is a long ways to carry stuff, particularly iron when it is rather heavy.” And I said, “We have trucks—trucks are plentiful for that [32] so why not do it?” He said, “You don’t need it,” and just passed it off that way. Therefore, we didn’t go get the stuff because it was too heavy. It was out of reason to carry it.

(Testimony of Doyle McDonald)

Mr. Chance: I object to that last statement and request it be stricken as a conclusion of the witness.

The Court: It is a conclusion but of course the court has heard him, but is not going to consider it because it is a conclusion.

Q. By Mr. Sheridan: Mr. McDonald, in order to refresh your recollection as to the conversation you had, I will ask you to read from your deposition which was taken on the 19th of May, 1945, at Long Beach, California. Read on pages 25—start on page 25 at line 20—

Mr. Chance: Just a moment, if you please. I do not understand the purpose of this. Are you impeaching your own witness, Mr. Sheridan?

Mr. Sheridan: No. I am asking him to refresh his recollection as to the conversation that he had.

Mr. Chance: You are not asking him to testify from that?

Mr. Sheridan: No.

Mr. Chance: Let the record show the witness is refreshing his recollection by reading his own deposition taken several months ago in this action.

Q. By Mr. Sheridan: Have you read it? [33]

A. Yes sir.

Mr. Chance: What pages did he read from?

Mr. Sheridan: Page 25, starting with line 20 to the end of the page, and on page 26 down to the end of the first sentence on line 7.

Q. By Mr. Sheridan: Now, Mr. McDonald, in your deposition on page 25, commencing on line 20, you stated,



(Testimony of Doyle McDonald)

"Give me a truck and I will go out and get the buckles, I will run them down, get a lot of iron and stuff I need here." And

"Mr. Tam said,—"

You referred to him as "he". You said,

"He said, 'Carry them.' I said, I am not used to packing stuff across a 40-mile farm.' I said, 'That is a pack-horse's job, but,' I said, 'I will rustle them, if you will give me a truck.' He said, 'We will see about that later', so we went to putting these together, another section of this bubble tower, and as I went back up there, I still had to do a portion of my welding and burning, because the welders were sick at the time, that were on the job. That is tacking, not exactly welding. Tacking is holding your metal together and tacking your dogs, which they had welders that couldn't even tack a dog on." [34]

Is that statement true?

Mr. Chance: I object to that. I do not understand that counsel for plaintiff is entitled to either impeach his own witness or to read from prior testimony. If the witness tells his story one way in court it is up to counsel for the other side to impeach him by contradictory testimony.

The Court: I think that is correct. He may read his deposition to refresh his memory and then you can ask him after he has refreshed his memory this or that or whatever you have in mind.

Mr. Sheridan: My purpose was not to impeach the testimony of Mr. McDonald. He apparently forgot the point to which I was referring and I used the deposition to refresh his recollection so he could testify on the point.

(Testimony of Doyle McDonald)

Mr. Chance: That is improper direct examination, I submit, your Honor. The witness can testify but he cannot be coached or brought along by counsel.

Mr. Sheridan: I was not attempting to coach the witness. The deposition is a part of the evidence in this case.

The Court: I think I shall let him answer the question.

The Witness: Now your question, please?

Mr. Sheridan: Will you repeat the question?

The Court: The question is, did those things take place as you detailed when your deposition was taken?  
[35]

The Witness: That is right, sir.

Q. By Mr. Sheridan: Now, Mr. McDonald, at any time after this conversation did Mr. Tam or Mr. Gratz or any other man in charge of your work make a truck available for you so the materials could be transported to the bubble tower for your use?

A. At one time, the first job, when we first started on the bubble tower he brought materials there in a truck.

Q. You are referring to Mr. Tam?

A. Mr. Tam, as requested and the types of materials and then he picked them up and as we went to the smokestack he brought the materials there in a truck.

Q. Now, Mr. McDonald, how far was the smokestack from the bubble tower?

A. A quarter of a mile would be a good distance.

Q. That is the approximate distance between the two?

A. Yes, that is the distance.

Q. These materials had been brought to the bubble tower and were transported from the bubble tower to the smokestack? A. By a truck, that is right.

(Testimony of Doyle McDonald)

Q. After they were transported there you worked on the smokestack, did you not?      A. Yes, sir.

Q. After you had terminated your work on the smoke-[36] stack were those tools brought back to the bubble tower?

A. No, they were not. They were more or less left around miscellaneously and used by other fellows who were carrying on that work after I had set the base in taking over the job.

Q. After you went back to the bubble tower you requested Mr. Tam to get materials for you, did you not?

A. I asked him for material, yes.

Q. Were those materials ever given to you prior to your discharge?

A. Only what we went out and rustled here and there within a distance of four or five hundred feet. I had my coolies to carry in metal, piece by piece, and I burned it up and made my own material.

Q. And that is the way you accomplished the job of getting these sections together, is it?

A. That is right, outside of the key plates and they were not usable anywhere else but on the bubble tower.

Q. Well, were these key plates something that were made in the States and sent over to you to use as a tool?

A. They had some key plates there out of quarter inch metal but I explained to Tam that they were not sufficient in strength and through a period of time of showing him and trying to actually operate them they bent considerably, and he went down and made up key plates out of one and one- [37] eighth stock, which were sufficient to do the job.

(Testimony of Doyle McDonald)

Q. And it was those one and one-eighth key plates that actually did the job of bringing these towers together—these tower sections together?

A. That is the only thing that did the job.

Q. Now, Mr. McDonald, at any time during the time you were on the bubble tower had you been ordered specifically by Mr. Tam to join these sections of bubble tower by the use of a turnbuckle?

A. I had been ordered, yes.

Q. When you were ordered to use a turnbuckle in joining these towers, what did you do?

A. I told him that it wouldn't work. He insisted that it would, so I said, "All right, we will put them on." He gave me two. I put one on each side. We started to screwing them up and after a certain amount of screwing on the things the threads bound freezing the turnbuckle to where it would not operate successfully or would not operate at all.

Q. When that had been demonstrated to Mr. Tam what did you do after that in order to join the sections together?

A. I reverted back to key plates, the larger ones that I had ordered.

Q. When you used these key plates were you able to join the sections and successfully weld the sections? [38]

A. Yes. Otherwise, we could not have done the job had we not had key plates.

Q. If you were to have used turnbuckles alone would it have been possible to join these tower sections?

A. The turnbuckles he gave me it would have been impossible.

(Testimony of Doyle McDonald)

Q. Now, Mr. McDonald, for identification only, I submit for your inspection this instrument and will you tell the court what this instrument is?

A. This is a jaw-to-eye turnbuckle. This is the jaw and this is the eye. Then they have turnbuckles that are jaw-to-jaw and eye-to-eye and hook-to-hook, or vice versa. One turnbuckle turns one way and one will turn the other way. One is a left-handed thread and one is right-handed thread. They go apart by holding one end and turning the other or it can be pulled together as of that method. It is now parting. Now, by reversing that turn there it will pull them together. That is a turnbuckle operation. That is a quarter-inch turnbuckle.

Mr. Chance: It is not contended that is the size of turnbuckle that was being used on the tower at that time.

Mr. Sheridan: No. This is a quarter-inch turnbuckle, is it not?

The Witness: That is right.

Q. By Mr. Sheridan: What size turnbuckles did you [39] attempt to use on the bubble tower?

A. One-inch turnbuckles.

Q. In other words, the turnbuckles that were used on the bubble towers would be approximately four times this size in diameter, would they not?

A. Yes, sir.

Q. How much would the turnbuckles that you used on the bubble tower weigh?

A. They would weigh roughly, a rough estimate, they would weigh probably ten or twelve pounds apiece.

Q. How long would those turnbuckles be in length unexpanded?

A. When they are fully expanded I think you have approximately, about—anywhere from 18 to 24 inches.

(Testimony of Doyle McDonald)

Q. In other words, you could bring an article together over a 24-inch space if you were attempting to draw them together? A. Something on that order, yes.

Q. Now, Mr. McDonald, with a one-inch turnbuckle in your experience how much of a weight would you be able to pull together with the turnbuckle?

A. If you were pulling with a turnbuckle as it is meant to be used—it was manufactured by specified men for the purposes that turnbuckles are meant for pulling of cables, you could break a one-inch turnbuckle at 20 tons or [40] a fraction better. If you were working it as a working object pulling cable to a solid load you could get approximately, maybe, four and a half ton pull out of it at most.

Q. Well, if a four or four and a half ton pull is the most you could get efficiently out of the turnbuckles, is that the reason why it was impossible for the turnbuckles to pull 20 tons from each side or approximately a 40-ton load there in this instance?

A. We had in this instance two turnbuckles. You had a 20-ton load, approximately, to pull, and combining the two turnbuckles at the most they possibly would pull under the working conditions would be nine and a half tons.

Q. Well, in attempting to pull 20 tons with turnbuckles which would only pull nine and a half, what happened to the turnbuckles?

Mr. Chance: In this particular instance?

Mr. Sheridan: Yes.

Mr. Chance: At what time? Prior to the time he went to the smokestack?

Mr. Sheridan: This foundation has already been laid, counsel. He stated that on this occasion Mr. Tam had asked him to apply these turnbuckles; he applied them to

(Testimony of Doyle McDonald)

the bubble tower and he was using them in demonstrating that they would not work.

Mr. Chance: That was prior to the time he went to the [41] smokestack?

The Witness: Yes, sir. The thing that happened was as you went to your, what you would call more or less the maximum working point, the turnbuckles began to freeze or build up friction and heat within itself and the metal taking such a severe strain, and it will do that, then as it began to heat the threads begin to cut themselves in half or tear up the threads and you couldn't turn it any further because the friction became too great. It wouldn't pull any more.

Q. By Mr. Sheridan: In other words, you could not pull the sections together? A. That is right.

Q. Because the turnbuckles— A. Refused to—

Q. Froze or parted?

A. Froze and refused to function any further.

Q. After you had demonstrated that turnbuckles were unsuccessful what method did you use in order to pull these sections together?

A. We reverted to the original idea of heavier key plates, which we used.

Q. Did those key plates successfully cause the sections to go together so they could be welded and fitted up?

A. Yes. They were the only thing that was really successful in fitting up the sections. [42]

Q. During the time that you were assembling all the three sections of this bubble tower had you used key plates alone?

A. Key plates for pulling them up. We used clips and dogs for the fairing of them and key plates for the pulling of them together.

(Testimony of Doyle McDonald)

Q. Now, Mr. McDonald, with reference to July 9th, I think, 1944, when you had this altercation with Mr. Tam at approximately 2:30 in the afternoon, what progress had you made in joining the one section with the other three sections prior to Mr. Tam's arrival?

A. We had some of our key plates there on the job and we had the crane there at approximately 15 minutes of two, and easily at two o'clock they had the large sections swinging in the air, coming together under the directions that I gave them where to place it and how to place it, and slightly after two we were welding the key plate dogs onto the bubble tower proper, and after about 15 minutes I had two of them secured and pulled up close enough to release the crane for the night to go home, which I had been directed to do.

Q. Well, was this bubble tower section secure and the dogs tied on at the time Mr. Tam approached you on this afternoon of July 9th?

A. Yes, it was finished.

[43]

Q. Was that added section of the tower in such condition that the crane could have been cut away and would no longer be needed?

A. The crane wasn't being needed then. It was through.

Q. What was left to be done in order to complete the tying on of this extra section of the bubble tower to the main tower?

A. To complete the tying on was coming back the next day and putting on a series of key plates anywhere from 18 to 24 all the way around, and start bringing it up into position, closing approximately that one inch gap that was left, closing it up, fairing it up, setting it up for inspection.



(Testimony of Doyle McDonald)

Q. But so far as getting the tower sections together securely enough to permit the crane to leave, there was nothing more to be done?

A. That which I had been ordered to do was done and it was finished.

Q. And that was done before Mr. Tam arrived on the scene? A. That is right.

Q. When Mr. Tam arrived, what if anything did he say to you?

Mr. Chance: Object to that as already asked and [44] answered.

The Court: I think he has covered that.

Mr. Sheridan: Very well.

Q. When Mr. Tam arrived did he inspect the bubble tower section that you had just put up?

A. Yes, he looked at it.

Q. Was he satisfied with the way that the sections were joined together?

Mr. Chance: Object to that as calling for a conclusion of the witness.

Q. By Mr. Sheridan: Did Mr. Tam order you to do anything other than what you had done when he arrived at the scene? A. (No answer.)

Mr. Chance: Object to that as having been asked and answered. He told him to get the turnbuckles.

The Court: He may answer it.

The Witness: He ordered me to go get the turnbuckles. I told him that we had it all set—that it was not necessary, and he said, “Well, where are the turnbuckles?” And I said, “They are down at the smoke-stack,” and from then on more or less the argument became heated and he eventually told me I was fired.

(Testimony of Doyle McDonald)

Q. By Mr. Sheridan: Were there any coolies present at the time of this conversation? [45]

A. There were no coolies present. They had left the job when the whistle blew. That was two o'clock. This happened about 20 minutes after two o'clock.

Mr. Sheridan: That will be all, Mr. McDonald.

### Cross-Examination

By Mr. Chance:

Q. The crane was at the location of the bubble tower on the afternoon of July 9th, when you had this altercation with Mr. Tam, was it not? A. That is right.

Q. And there was a crane operator there operating the crane?

A. Yes, there was a crane operator there.

Q. And did he have a rigging crew there also with the crane?

A. There were one or two riggers that was considered a crew, yes.

Q. And they were just standing around at the time Tam came there, were they? A. Yes, they were.

Q. And they were not helping you?

A. No. Their work had been finished.

Q. But they were just standing there with the crane?

A. That is right. [46]

Q. At the time Tam came up?

A. That is right.

Q. They had not left even though their work had been finished?

A. I was the one to determine that. I knew it was finished.

(Testimony of Doyle McDonald)

Q. The slings were still around the section and attached to the crane at the time when Tam arrived?

A. They were around the section but they were not tight. They were hanging slack. They were waiting for Tam to come and say to turn them loose.

Q. So it was up to Tam to decide whether the crane had finished its job that afternoon or could be turned loose to go to work on another job the next morning?

A. Presumably so. After all, he was the foreman.

Q. And the crane had this sling or two slings around the 20-ton section and had the weight of it off of the ground, is that correct?

A. That is not correct.

Q. Had the weight of it off of the cribbing?

A. No, that is not correct.

Q. When you had been working on the weld plates had the weight been lifted off the section by the crane?

A. You will pardon me, but I don't understand what "weld plates" are. [47]

Q. You have been talking about key plates?

A. Key plates.

Q. When you were working on the key plates had the weight been slightly taken off the section by the crane?

A. The section was—I can explain that more thoroughly. The section was as of the position that Mr. Sheridan is. The other assembled parts are in the position that you are. We had to pick it up with the crane and just merely turn with the crane and set it in place, secure it with two key plates. It was in place. All the crane had to do was drop its slings. It had dropped its weight. The slings were loose. All they had to do was turn their slings loose and get away.

(Testimony of Doyle McDonald)

Q. Now, when you use turnbuckles on assembling two sections of this character of the bubble tower or vessel, isn't it a fact that you use a crane in conjunction with the turnbuckles to keep the weight slightly off the section in order to raise it just slightly off the ground, isn't that correct? A. That is wrong.

Mr. Sheridan: Object to that question. There is no evidence here that you do use turnbuckles in this type of work to properly get the sections together.

The Court: The witness answered the question.

Q. By Mr. Chance: At the time you state you were [48] giving a demonstration to Mr. Tam before you went down to the smokestack as to why turnbuckles would not function in the assembly of sections of this character, was there a crane being used at the same time to keep the weight of the section off of the ground when you were demonstrating the bringing of the two sections together by the turnbuckles? A. No, there was not.

Q. No crane there at all? A. No, sir.

Q. Wasn't the normal practice on the island, to your knowledge, to use turnbuckles to bring these sections together and at the same time have a crane there to keep the weight slightly suspended off the ground?

A. On the island. Anywhere I have ever worked it was not normal practice to use turnbuckles for pulling heavy loads. They are not made for that and they will not function as such.

Q. Even when you have a crane and jacks for use in conjunction with it? A. No.

Q. When you arrived at the island on May 28, 1944, you were assigned that same day or the following day to

(Testimony of Doyle McDonald)

go to work on the bubble tower under the supervision of Mr. Tam as a boilermaker; is that correct?

A. I believe that is correct. [49]

Q. And that bubble tower was a part of one of the sections or units going up as a part of the catalytic cracker unit, is that correct?

A. That would come under an engineer. I don't know that much about it.

Q. And at the time you were assigned on May 28th to work on this bubble tower there was one other boilermaker with his coolie crew also working on the same bubble tower, was there not?

A. That is wrong.

Q. Wasn't there a Mr. Christianson who was also a boilermaker and working on the bubble tower and working with you several weeks after you were assigned to that job?

A. That is wrong.

Q. Christianson never worked with you?

A. I don't even know Christianson. I never met him in my life.

Q. When you first went on the bubble tower were there any of the sections already joined or assembled or were all the sections un-assembled at the time you first went on that job?

A. They were laying around, as I previously explained, different sections, where the crane could pick them up and lay them in place. There had been none of it assembled.

Q. None of them had been assembled? [50]

A. No.

Q. Now, you were working on the bubble towers for a couple of weeks, possibly two weeks, I believe you said, after you were assigned to that job on May 28th; is that right?

A. I believe so, I believe that is right.

(Testimony of Doyle McDonald)

Q. And you assembled three sections of the bubble tower before you were taken off the bubble tower the first time and transferred to the smokestack; is that right?

A. (No answer.)

Q. Or were there four?

A. To be exact, I would not say. It could be two, three, or I had started on the fourth plus the base ring, which was also a section within itself.

Q. And at the time that you were working on assembling these three or four sections before you went down to the smokestack, you had a crew of Arabian laborers that you call "coolies" working under you, did you not?

A. I did not assemble these sections to that extent before I went to the smokestack.

Q. You did not answer my question. I will reframe it.

A. Excuse me.

Q. Perhaps it was not clear. You had a crew of Arab coolies working under you when you were assembling these [51] sections of the bubble tower before you went down to the smokestack?

A. Yes, at times in varying degrees or numbers.

Q. And how many did you have? Four or five Arabs in the crew usually?

A. I had at times—at times I had as high as five, but normally about two.

Q. From two to five? A. That is right.

Q. Arabs working for you? A. That is right.

Q. And they did the manual work of lifting and carrying things and working under your direction generally; is that correct? A. No.

Q. What did they do?

A. They were there to go get rods or help a welder or pull a hose. When we refer to a "hose" we mean a

(Testimony of Doyle McDonald)

lead from a welding machine; or to carry something or pick something up. They are a very weakly type of persons. Twenty-five pounds is a terrific load for them.

Q. But they were there to carry things in general and do the manual labor, is that correct?

A. No. I did the manual labor myself.

Q. The Arabs never did the manual labor, is that it?  
[52]

A. They did part of it which they could do, which was very little.

Q. And that was what their job was, though, wasn't it, to do the manual work of picking up and carrying things and helping you men with skill and experience; isn't that correct?

A. Assisting in any way they were capable of.

Q. Now, towards the end of the second week that you were working on this bubble tower, after you had been first assigned there on May 28th, at the end of a couple of weeks the welders that were available there—there became a shortage of them and the welders working on these sections were transferred out to some other job; were they not?

A. One of them, one welder particularly, a big tall fellow—I never knew his name. He went to driving a water wagon. He said it was easier work and he would rather do it.

Q. But at the end of the second week the welders that were on the job were pulled off, is that correct, that were on the bubble tower job?

A. No. The other welder got sick and went to the hospital.

(Testimony of Doyle McDonald)

Q. There was a shortage of welders on the bubble tower at the end of the second week, is that correct?

A. That is right. [53]

Q. And as a result of that Tam asked you to go down and work on the base of the smokestack at another unit, is that correct?

A. He asked me to go to work on the smokestack.

Q. He wanted you to work on the base of the smokestack, the setting of it? A. That is right.

Q. And you took your crew of Arab coolies down there with you to assist you in the setting of that base of the smokestack? A. Yes, the two of them.

Q. And you worked down there on the smokestack for approximately two weeks, is that correct?

A. Roughly speaking, yes.

Q. And this Arab crew was with you during that period of time you were down at the smokestack?

A. Yes, sir.

Q. And then, let me see, two weeks from May 28th would be about June 15th, roughly speaking, around there, and two weeks from that would be around the end of June, so that we have brought the calendar down to about the end of June, haven't we, when you were down on the smokestack, is that right? I don't want to pin you down to dates.

A. Roughly speaking, just roughly speaking.

Q. Could have been a few days one way or the other? [54] A. That is right.

Q. Now, let me see. I believe that you were ill for a couple or three days in the first week of July, were you not? A. That is right.



(Testimony of Doyle McDonald)

Q. You were hospitalized there?

A. That is right.

Q. And that was about July 4th or 5th you were hospitalized and you came back to work shortly after the 4th of July, isn't that about right?

A. I believe that is right.

Q. And then when you came back from the hospital you went back to the smokestack, did you, or did you get transferred by Tam immediately back to the bubble tower? Do you remember?

A. That is pretty hard to recall.

Q. You don't remember whether you went back to the smokestack from the hospital or whether you went over to the bubble tower?

A. No, I don't.

Q. In any event, you were back on the bubble tower after a matter of from two to four or five days?

A. Roughly speaking.

Q. After you came back from the hospital?

A. Roughly speaking, yes.

Q. Somewhere between two, three, four or five days? [55]

A. Yes.

Q. You had finished the work you were doing down on the smokestack and you had been to the hospital and come back and then you were put back on the bubble tower in assembling the sections. You would be about on the fourth section when you came back to the bubble tower, is that right?

A. I am not positive on the amount of sections, but it was the next section to be assembled.

Q. Might have been the third, fourth or fifth section?

A. Could not have been the fifth. It possibly was the third or fourth.

(Testimony of Doyle McDonald)

Q. And you had your Arab crew of coolies back with you at the bubble tower when you first came back after you got out of the hospital, is that correct?

A. Two of them, yes.

Q. Two of them only? A. That is right.

Q. And they were working with you steadily from say the fourth or fifth or sixth of July down to the 9th of July, when you went back to the bubble tower, is that correct, during the regular hours? A. That is right.

Q. Now, you say that Tam gave you an order a couple or three days before July 9th, the date of this last [56] altercation you have related with him, and told you to go down and get the turnbuckles and get everything ready, and you told him that if he would let you have a truck you would do so, or something to that effect, is that correct?

A. I made the request for the equipment and a truck.

Q. And he told you to get the turnbuckles at that time, did he?

A. He said we could carry them and I told him it was a little tough on a man to carry stuff across a 40-acre farm of such weight.

Q. Let me ask you this. He ordered you to bring turnbuckles to the site of the bubble tower a couple or three days before July 9th, is that correct? A. Yes.

Q. And at that time you had at least two coolies working under you and available to carry that equipment for you or assist you in doing it, two or three days before July 9th, is that correct?

A. Yes, that is right.

(Testimony of Doyle McDonald)

Q. But even so, you refused Tam's order to get the turnbuckles two or three days before July 9th, is that correct?

A. He said, "Wait and we will see." I did not refuse his order.

Q. Isn't it a fact, Mr. McDonald, that these turn- [57] buckles that we are talking about had been on the site of the bubble tower just prior to the time when you went down to the smokestack about the middle of June for that assignment on the smokestack, isn't that correct?

A. That is right.

Q. And isn't it also correct that those turnbuckles were taken with other equipment from the bubble tower site down to the site of the smokestack for use on the smokestack? A. That is wrong.

Q. Where did the turnbuckles at the bubble tower go to?

A. They were taken to the smokestack—100 yards away from the site of the smokestack where it was lying on the ground dis-assembled.

Q. That is the turnbuckles were dis-assembled?

A. Where the smokestack was dis-assembled, a portion of it.

Q. And so the turnbuckles were taken from the site of the bubble tower somewhat about the middle of June when you were assigned down to the smokestack, and were taken down to the site of the smokestack, is that right?

A. The turnbuckles were never taken to the site of the smokestack.

Q. Well, to a place about 100 yards from the smokestack then? [58] A. Approximately so.

(Testimony of Doyle McDonald)

Q. And were they used down at the smokestack or in the vicinity of the smokestack in its assembly?

A. Not while I was assembling the smokestack, no.

Q. What were they taken down to the site of the smokestack for?

A. They were not taken to the site of the smokestack.

Q. Or in the vicinity of the smokestack?

A. Some other fellows were working over there with them.

Q. Some other fellows were using turnbuckles, is that right?

A. That is what I was told. I did not go over to see.

Q. Were they assembling tower sections?

A. No, they were not.

Q. And isn't it a fact that this smokestack or the position where the sections of the smokestack were being assembled by you or these others, sometime during the latter part of June, was, roughly speaking, between 100 and 300 yards distant from the site of the bubble tower where you were assembling the bubble tower sections?

A. Approximately a quarter of a mile.

Q. About a quarter of a mile? A. Yes.

Q. How many city blocks would you say that was, taking [59] the distance of a city block right here in front of the City Hall down to the left or down south of the Federal Courthouse Building, visualizing the length of that city block in front of the City Hall. Was it one city block or two city blocks or three city blocks? How many would you estimate?

A. Well, a rough estimation on the basis of 5,280 feet are a mile, it might possibly be a block and a half. My conception could be wrong.

(Testimony of Doyle McDonald)

Q. In other words, it was the distance of about a block and a half?      A. A long block and a half.

Q. The size of the block out in front of the City Hall, right in front of this courthouse building?

A. I never noticed the block particularly. I don't live here.

Q. It is a fair size block. It is not a short block. You have not noticed that so you could not say?

A. No, I haven't.

Q. But in any event it would be about a block and a half of a good size city block, is that about it?

A. I don't know. It would be a quarter of a mile, approximately. As far as a block is concerned, I just couldn't say because I never stopped to judge it to that extent. I would say roughly a long block and a half. [60]

Q. Now, the turnbuckles that Tam ordered you to get two or three days before the July 9th altercation and likewise on July 9th, were situated down in the vicinity of that smokestack, isn't that correct?

A. That is right, I suppose.

Q. And they were actually kept in a tool box that was near—within a few feet of the smokestack, isn't that correct?

A. There were no tools that I ever had or any tool box that I ever saw on the job where we and our tools were involved.

Q. There was no tool box down near the smokestack in which these turnbuckles were kept at the time you were ordered to get them?      A. Not in this vicinity.

Q. No tool box at all down near the smokestack, that is your recollection?      A. Not for our equipment.

(Testimony of Doyle McDonald)

Q. Was there any at all down there?

A. I didn't recognize or look for any other because that wasn't our part.

Q. You don't know whether there was a tool box down near the smokestack then?      A. I beg your pardon?

Q. You don't know whether there was or was not a tool [61] box down near the smokestack then?

A. I asked for equipment to be stored and he said, "Throw it inside, in the base, it will be there in the morning when you come back."

Q. Will you answer my question? Will you please read the question, Mr. Reporter?

(Question read.)

Mr. Chance: I move to strike the answer as not being responsive.

The Court: I don't think the answer is responsive.

Q. By Mr. Chance: Will you answer the question?

A. What was the question?

Q. You don't know whether or not then there was a tool box down near the smokestack at Bahrein Island at this time?

A. No, there wasn't for our equipment.

Q. Was there any for turnbuckles—in which turnbuckles were kept?

A. There were no turnbuckles near the smokestack where we were.

Q. Let us get this straight. The turnbuckles had been taken from the bubble tower site and had been taken down near the smokestack, within some feet of the smokestack, about the middle of June when you were ordered from the bubble tower down to the smokestack, isn't that correct?

A. I don't know. We left the turnbuckles. [62]

(Testimony of Doyle McDonald)

Q. Did you leave them at the bubble tower site?

A. At the bubble tower.

Q. At the bubble tower site?

A. Yes. I had nothing further to do with them.

Q. So there were turnbuckles at the bubble tower site between the first and middle of June when you were working on the sections at the bubble tower, is that correct?

A. The first time I left there, there were turnbuckles at the bubble tower.

Q. And when you got back a few days before July 9th there were no turnbuckles at the site of the bubble tower, is that correct?

A. That is right.

Q. And Tam ordered you to go down to the vicinity of the smokestack and pick up two turnbuckles or have your coolies pick them up and bring them back to the site of the bubble tower, isn't that correct?

A. He did, but he rescinded the order.

Q. You say he rescinded the order?

A. Yes.

Q. Now it is a fact, isn't it, that on July 9th, when you had this altercation with Tam, when he, as you say, asked you where the turnbuckles were when he arrived at, sometime around 2:30 p. m. on July 9th, at the bubble tower site, that those turnbuckles were approximately a block and [63] a half, a city block and a half or as you say, a quarter of a mile from the bubble tower, and would have required you or the colliers, if present, to go down and pick them up and bring them a block and a half both ways, isn't that correct?

A. They were supposed to have been there, yes.

Q. And you have stated that these turnbuckles were one inch in diameter. That is, I take it the swivel screw was one inch in diameter and weighed between ten and 12 pounds.

A. Approximately so.

(Testimony of Doyle McDonald)

Q. So that would have required either you or your coolies to pick up two tools weighing from 10 to 12 pounds each, is that right?

A. I did send them after the turnbuckles at a later date, but they couldn't find them.

Q. At what later date did you send the coolies for the turnbuckles and could not find them?

A. At the time I returned to the bubble tower the second time.

Q. You did send some coolies down to look for turnbuckles after you came out of the hospital and came back to the bubble tower?

A. That is right.

Q. How many days before July 9th did you try to find turnbuckles with your coolies?

A. I don't recall, but I was preparing for the next [64] section and getting the turnbuckles as Tam had requested, but they couldn't find them. They came back and reported to me that they couldn't find them.

Q. You were going to use those turnbuckles if found by the coolies on assembling the next section of the tower?

A. It wasn't my intention; it was Tam's idea.

Q. Well, you were going to use them under his instructions then, were you, if your coolies found them and brought them back?

A. I was going to put them on as he suggested and asked me to do.

Q. At the time Tam came up to the section of the bubble tower that you were working on about 2:30 in the afternoon of July 9th, just before you—immediately before you had these words with him, will you tell us what you were doing at that particular time? I mean where you



(Testimony of Doyle McDonald)

were standing and what you were working at and what you were doing, please?

A. I was standing on the ground.

Q. You were on the ground?

A. On the ground.

Q. You were not up on the scaffolding or on the cribbing or anything?

A. I was on no scaffold or no cribbing. I had been working for approximately 20 minutes alone by myself with [65] my welder; he only did the welding.

Q. You had a welder there working with you, is that right?

A. He worked as a welder, not with me.

Q. He was working at the very same spot you were, was he?

A. He would work as I directed.

Q. He was working under your direction?

A. In the process of welding.

Q. Welding on a lug or dog, was he, or a clip?

A. He had completed his welding.

Q. What was he welding on?

A. He was welding on a lug to place the key plate on.

Q. What were you doing at that time?

A. I was holding it while he was welding it.

Q. You were holding the lug and he welded it?

A. But at the time Tam came up there I was standing on the—we had secured two key plates, wedged them securely, and brought the bubble towers within an inch of being finished or secured as Mr. Tam had asked us to do for the night to release the crane. The crane was standing there with the slings loose and I was standing waiting for him to make his next decision. Our job had been finished as directed by Mr. Vessels.

(Testimony of Doyle McDonald)

Q. Well, you were just standing around then when he [66] came on the site of the bubble tower at 2:30 or approximately 2:30 on that day, is that right?

A. I was standing there waiting for him to make his next decision.

Q. But when he arrived you were not doing anything?

A. We had just practically completed the job as he arrived.

Q. But the two sections were about an inch apart, is that correct? A. Approximately so.

Q. And being an inch apart they were not ready to weld, were they?

A. We were not instructed to get them ready to weld.

Q. But if you had put turnbuckles on and had the crane simply take the slack out of the sling, couldn't you have brought those two sections closer together that afternoon before 3:00 o'clock with the use of turnbuckles?

A. Before 3:00 o'clock.

Q. Yes.

A. We had it finished 20 minutes after two.

Q. You had it finished by bringing it within about an inch—bringing the two sections about an inch apart, is that correct? A. Yes, sir, that was our orders.

Q. Now, if you had carried out Mr. Tam's instructions [67] and had gone and gotten the turnbuckles and put those on and had the crane take the slack out by just putting a little weight on the slings and lifting the 20-ton section up a bit, those two turnbuckles would have brought those two sections closer together than one inch, would they not? A. I don't believe so.

Q. But that is what Tam ordered you to do, wasn't it? A. No, he didn't.

(Testimony of Doyle McDonald)

Q. What did he want you to get the turnbuckles for?

A. He told me to get the turnbuckles and he said, "Well, we will see later," and he never since, until he came back to the job at 20 minutes after two, he had never ordered me since then that—he said he would see about it later.

Q. That was at 2:30?

A. Then he asked me about them.

Q. At 2:20 or 2:30 he asked you where the turnbuckles were and you said you didn't have them and he told you to go and get them but you did not do so. If you had gone and gotten them and brought them back what did he want you to do with them, the turnbuckles?

A. He didn't tell me to go get them.

Q. Now in your deposition on May 19, 1945, in this case, at page 25, and I read and I am going to ask you if it is not correct that you so testified:

" 'Where in hell are your turnbuckles?' I said, 'I told you the other day to give me a truck and I [68] would gather those up, and you put it off. He said' meaning Tam,

" 'I want turnbuckles on there, and I want them on there right now.' I said, 'You had better grow them. Then we can put them on.' One word led to another, so he squared off as though he were going to hit me, and I backed off. I was going to pick up a club and protect myself, but he said, 'You are through, get off the job.' "

That is your testimony on May 19th of this year, isn't that correct?

A. If it is out of that deposition, that is correct.

(Testimony of Doyle McDonald)

Q. So when he said he wanted the turnbuckles on there you told him he had better go and grow the turnbuckles, isn't that correct?

A. Because we had tried previously, several days before, to find them and couldn't.

Q. If you had been able to find turnbuckles and bring them to the site of the bubble tower that afternoon of July 9th, what did he want you to do with the turnbuckles, to your knowledge?

A. If we could have found them or he had brought them, or they were there, I would have put them on as he wanted them on there.

Q. You would have put the end of one turnbuckle [69] attached to a lug or dog or clip welded on one of these sections, on the last section, and you would have put the other end of the turnbuckle attached in one way or another to a lug, clip or dog welded on the adjoining section of the bubble tower and you would have had the weight of the crane—you would have had the weight of the section lifted by the crane and you would have turned or caused or had someone else help you turn those screws and bring the bubble tower section that much closer together, isn't that right?

A. We tried it and it didn't work.

Q. You mean to say that if you took the weight, just took the weight off of this 20-ton section of steel tubing by having the crane pick up the slings with a hoist and just take the weight of the section off the ground and then put the pressure on these turnbuckles by turning the turnbuckles, that those two sections would not have come closer together? Do you mean to say that?

A. If everything was to precision point I don't know whether it would have or not, but the crane never released

(Testimony of Doyle McDonald)

the pressure on the turnbuckle. One was always in a bind or the other one was. This is heavy loads that you are working with. You must conceive 20 tons against a 60-ton object is heavy and a one-inch turnbuckle is not a tool for bringing stuff in line like that and it never was.

Q. Mr. McDonald, you testified, I believe, that according to the manufacturer's catalog, which I believe you referred to, that a one-inch turnbuckle weighing between 10 and 12 pounds with a one-inch diameter on the swivel screw, which would be expanded to from 18 inches to 24 inches, that is, between a foot and a half and two feet, would pull a pressure of approximately 20 tons on a cable. Was that the purport of your testimony on direct examination?

A. No. I said working loads.

Q. A working load?

A. I definitely said a working load.

Q. Now, if you had the crane take the weight of this 20-ton section, just lift it off the ground, just to get the weight off of it—I do not mean to suspend it in the air a foot or two, but just have the crane take the load off the ground slightly by putting the pressure on the slings and just suspending it slightly that then these two turnbuckles, if attached to the two sections would have been unable to bring that new section into closer juxtaposition of the old section than one inch? Do you mean to say that?

A. The perfection of such tremendous loads under those conditions are not workable. They never were and they never will be. You are assuming down to precision points which you don't have in a crane. There is the spring of the cable, the spring of the boom; the wind blowing, blocks, the unevenness of the ground and a heavy piece of metal you [71] are handling. You are referring

(Testimony of Doyle McDonald)

to precision instruments. You are not referring to construction work.

Q. Mr. McDonald, do you want to leave the impression that the only instruments that you used in assembling sections 1, 2 and 3, and 4, if there was a fourth one, of this bubble tower, between the end of May and the 9th or 10th of July, was done with key plates and wedges?

A. Key plates, wedges, dogs and clips.

Q. Did you use any hydraulic packs?

A. We started to use a hydraulic jack. It was broken and we couldn't use it.

Q. You mean to say you had only one hydraulic jack available on the island for this one particular bubble section?

Mr. Sheridan: That was not his statement. I object to that.

Mr. Chance: I will withdraw the question, Mr. Sheridan.

Q. Was there only one hydraulic jack of sufficient weight on the island at that time that you could use on this bubble tower?

A. I don't know. I asked for a hydraulic jack at one time and they said there wasn't any available but there was one and it was broken.

Q. What was the size of it? What was the pressure of that particular one you say was broken?

A. Of that hydraulic jack? [72]

Q. Yes.

A. It was a 10-ton hydraulic jack.

Q. Isn't it a fact, though, that you had several jacks around the site of this bubble tower and were using them in assembling these sections of the bubble tower?

A. There was not.

(Testimony of Doyle McDonald)

Q. Only the one? That was the broken one, is that correct? A. That is correct.

Q. You have to get the two sections of a tower of this size for purposes of catalytic cracking units close together, closer together than one inch in order to weld them, don't you—weld them together and make them one continuous tower when erected?

A. You are referring to the final fit-up?

Q. Yes. A. Yes.

Q. On a final fit-up within what fraction of an inch must you bring the new section in juxtaposition of the already assembled sections of a bubble tower of this size in order for the welders to go to work?

A. Roughly—I cannot remember, but it would have been from 1-16th, maybe to 3-16ths. I believe the shims were 3-16ths, but I am not positive.

Q. So that the two sections had to be brought closer [73] together either that afternoon or the next morning than one inch in order for the welders to go to work on it, isn't that correct?

A. We were only supposed to secure it for the night and release the crane.

Mr. Chance: Would you read the question?

(Question read.)

The Witness: I did not understand you.

Q. By Mr. Chance: Let me state the question this way. It is a fact that this fourth section, if it was the fourth, had to be brought closer to the end of the third section that had already been assembled to the preceding sections than one inch either that afternoon of July 9th or the next morning, or sometime, in order for the welders to go to work and weld the sections together?

A. In the process of assembly, yes, sir.

(Testimony of Doyle McDonald)

Q. Had to be brought down to 1-16th or 3-16ths of an inch distance between the ends of the two sections in order for them to be welded together, isn't that correct?

A. That is right.

Q. So that afternoon you only had them within about one inch of each other, the two sections?

A. Approximately so, yes.

Q. How were those sections to be brought closer together than the one inch either that afternoon or the next [74] day or whenever it was? By what means would you bring them closer together?

A. By key plates and wedges.

Q. Would you need the crane in order to bring them closer together with key plates and wedges?

A. We were through with the crane. We didn't need it.

Q. Would you need a crane in order to bring the two sections together closer than one inch by means of key plates and wedges?

A. No. We would never need the crane any more.

Q. What position was that section four in on the ground at the time the crane came there at a quarter of two on July 9th? Where was its position in relation to the three sections that had already been assembled?

A. Well, it would be, roughly I would say it was—all the crane had to do was whirl around in that position and pick it up and whirl back around and let it down in place.

Q. So it was some number of feet—the fourth section was some number of feet away from the three sections already assembled when the crane came there in the afternoon, at about a quarter of two the afternoon of July 9th?

A. I guess that is right.



(Testimony of Doyle McDonald)

Q. Now, on the afternoon of July 9th at about 2:30 p. m. when Mr. Tam came up to you, it was a fact, was it not, that you were actually standing on a scaffold or on the [75] cribbing and were not standing on the ground at that time? A. I was standing on the ground.

Q. At that time the crane was there, there was a crane operator and there were one or two crane riggers; there was this welder that you say had just been helping you. Now, there was also a man by the name of Einer Arhendt present at that time near the bubble tower, isn't that correct?

A. He was setting over in the shade under a canopy that they had built there. He is a welding inspector for somebody. I don't know, but he was inspector on that particular job.

Q. How close was he to where you were standing near this fourth section of the bubble tower when Mr. Tam came up on the scene about 2:30 in the afternoon of July 9th? A. Roughly I would say 25 or 30 feet.

Q. Twenty-five or 30 feet away? A. Roughly

Q. So when you had this conversation with Einer Ahrendt that you talked about on your direct examination, he was about 25 or 30 feet away from where you were standing near this section, is that correct?

A. Mr. Einer?

Q. Yes, I am talking about Einer Arhendt.

A. When I was talking to Tam?

Q. No. Let me repeat that question. You said that [76] you went over and had a talk with Einer Arhendt, the welding inspector, after you had this, your last conversation with Mr. Tam that afternoon. You testified to that on your direct examination. Do you recall that? A. Yes, I do.

(Testimony of Doyle McDonald)

Q. And Einer Arhendt was standing in the same place after you got through with your talk with Mr. Tam as he was when Mr. Tam came up on the scene, under this canopy?

A. Prior to that time I don't know where Mr. Einer was but when I left he was there where I spoke of.

Q. Under the canopy?

A. Under the canopy, yes.

Q. And that you say was 25 or 30 feet from where you were standing when Mr. Tam came up?

A. Roughly so.

Q. Was Mr. Arhendt within hearing distance of the conversation that you had with Mr. Tam that afternoon?

Mr. Sheridan: That calls for a conclusion of the witness.

Q. (By Mr. Chance): What would be your opinion on that? (No answer).

Q. I will withdraw the question.

The Court: He may go ahead and answer the question. He may express his opinion.

The Witness: You speak of Mr. Arhendt. Mr. Einer was [77] where he was. I don't know when I left—when I left he was where I said, under the canopy.

Q. By Mr. Chance: All right. And that was 25 or 30 feet away from where you had been standing?

A. Roughly so.

Q. Now, it was after Mr. Tam ordered you to get the turnbuckles around 2:30 p. m. on July 9th and after you had refused to go and get those turnbuckles—that is, after you told him “Go and grow them,” that one word led to another and as you have testified in your deposition, he squared off as though he was going to hit you and you backed off and you were going to pick up a club and pro-

(Testimony of Doyle McDonald)

tect yourself, that he, according to your testimony in your deposition, said, "You are through, get off the job." Is that correct.      A. Well, he intimated at—

Q. Just answer the question.

A. I recall that he told me I was fired. I recall he told me I was through.

Q. Will you answer the question?

A. Yes. I misunderstood your question. Would you repeat it, please?

Mr. Chance: Will you read the question?

(Question read.)

The Witness: Judge, your honor, I never refused to go get the turnbuckles. [78]

The Court: You may break down your answer in order to answer the question. You may answer it in the affirmative or negative and then explain the question if you desire. It is rather involved.

The Witness: I never refused to go get the turnbuckles.

Mr. Chance: I will withdraw the question and ask it this way. I will let the record stand as it is.

The Court: Anything further from this witness?

Mr. Chance: Yes, your honor. I have some additional questions. I think I am going to have to ask the indulgence of the court and counsel. I mentioned this to Mr. Sheridan and he very courteously agreed, if your Honor will do so, to permit me to defer the completion of my cross examination of the plaintiff and put on a witness that has come down from the north and who has to leave tonight. He very courteously came down so that we could conclude his testimony before the close of the day. Would your Honor be good enough to permit me to put him on out of order as a part of my case? He is Mr. Tam, the foreman, concerning whom there has been some testimony.

(Testimony of Doyle McDonald)

The Court: Yes. We will take our afternoon intermission. But before you put your witness on and since you are going to ask that he be excused and will not be subject to being recalled for rebuttal, I think you had better clear up the matter that was indicated in your last question. If [79] neither side wants to ask it the court will on his own motion. I would like for the witness to again detail just exactly what took place preceding the time when Mr. Tam said to the witness, "You are fired." I understand the difficulty between the witness and Mr. Tam. The major difficulty was the difference in procedure in bringing these sections together, but Mr. Tam was your boss.

The Witness: That is right, sir.

The Court: Now then, just what took place?

The Witness: I had previously, several days before, asked the coolies to go get the turnbuckles. They couldn't find them. Then on this point Tam came around and he said, "Where are the turnbuckles?" I had completed the job. It was finished.

The Court: The 8-hour shift was over and your coolies had left?

The Witness: They had left 20 minutes before and I had completed the job. It was finished. I said to Mr. Tam, "You will have to grow the turnbuckles."—meaning that they were lost, and he said, "Well, I want turnbuckles on there," and I at no time refused to go get the turnbuckles for the fellow, but you can't get something that you can't find.

The Court: I don't want you to argue about it. What else happened?

(Testimony of Doyle McDonald)

The Witness: Then he got pretty rash and so did I, [80] more or less. There were no blows struck. Eventually he said, "You are fired, get off the job," and that was all there was to it, outside of my walking by this Mr. Einer, the welding inspector, and shaking hands with him and telling him goodbye.

The Court: We will take an intermission now for 15 minutes and then you may put on your witness out of order.

(Short recess.)

The Court: You may proceed.

Mr. Chance: Mr. Tam, will you take the stand?

LEON J. TAM,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct-Examination

By Mr. Chance:

Q. Will you state your name?

A. Leon J. Tam.

Q. Mr. Tam, what is your present residence?

A. Present residence?

Q. Yes. A. San Francisco.

Q. Do you want to give us the street address, your [81] present residence address?

A. 801 53rd street, Oakland, right now.

Q. Oakland, California? A. That is right.

Q. And what is your occupation?

A. Boilermaker foreman.

(Testimony of Leon J. Tam)

Q. And for how many years have you been a boiler-maker or boilermaker foreman?

A. Boilermaker foreman about 35 years.

Q. Do you belong to a boilermakers' union?

A. That is right.

Q. What union is that?           A. A. F. of L.

Q. A. F. of L. Boilermakers' Union?

A. That is right.

Q. For what period of time have you been a member of the A. F. of L. Boilermakers' Union?

A. Oh, around 25 or 26 years or more.

Q. Are you presently a member of the union?

A. I have a withdrawal—I am still a member.

Q. And what experience, if any, have you had in oil refinery construction work?

A. Around 17 years.

Q. What companies have you worked for?

A. Standard Oil Company. [82]

Q. Refinery construction work?

A. Standard Oil Company of California.

Q. During what period of time did you work for Standard Oil of California in the refinery construction business as a boilermaker foreman?

A. As a foreman?

Q. And as a boilermaker?

A. 1924 to 1943 for the Standard Oil Company.

Q. And what positions did you hold with them during that period of time, 1924 to 1943?

A. Boilermaker layer out, construction foreman, shop foreman last five years and a half at Richmond.

Q. Richmond, California?           A. That is right.

(Testimony of Leon J. Tam)

Q. That is the plant of the Standard Oil Refinery, is it not?      A. That is right.

Q. And during that period of time it was in connection with construction and repair work in and about the refinery?      A. That is right.

Q. Have you worked on and about the construction of large towers and vessels and tanks that go to make up oil refineries?      A. That is right.

Q. What type of boilermaking experience would you say [83] that you have had as a general proposition?

A. All around boilermaker.

Q. What does that consist of, "all around boilermaker"?

A. Fitting up, welding, cutting, laying out, supervision.

Q. Did you work on the Bahrein Island in the Persian Gulf on construction work prior to the year 1943?

A. I did.

Q. For whom?

A. Bahrein Petroleum Company.

Q. Standard Oil of California and the Bahrein Petroleum Company, Limited?      A. That is right.

Q. That is the Bahrein Petroleum Company, Limited, owned the oil concession on Bahrein Island, is that correct?      A. That is right.

Q. And what work did you do for the Bahrein Petroleum Company prior to 1943?

A. I was boilermaker foreman.

Q. Boilermaker foreman?      A. That is right.

Q. And what type of activity were you engaged in?

A. Putting up practically the same thing we put up—practically the same as this last one.

(Testimony of Leon J. Tam)

The Court: When was that? You said prior to this one. [84]

The Witness: Crude unit, stabilizers.

The Court: What year?

The Witness: That was 1936 and '37.

Q. By Mr. Chance: In 1936 and 1937 you worked on Bahrein Island? A. Yes, sir.

Q. As a boilermaker foreman?

A. That is right.

Q. For the Bahrein Island Petroleum Company, Limited? A. That is right.

Q. Was that in the construction of the first refinery unit on the Island?

A. Put up the first unit put up on the island.

Q. What size unit was that?

A. 10-000-barrel.

Q. That is, it would run 10,000 barrels a day?

A. That is right.

Q. Were you there from the beginning of that construction of the 10,000-barrel unit to the completion of it in 1936 and 1937? A. That is right.

Q. And you worked as a boilermaker foreman there then? A. That is right.

Q. Are you presently employed by any company?

A. No, sir, I am not. [85]

Q. By whom were you last employed?

A. Bechtel-McCone.

Q. During what period of time were you employed by Bechtel-McCone?

A. From December 7, 1943, to July 5, 1945.



(Testimony of Leon J. Tam)

Q. Was that by the defendant in this action, Compañia Constructora Bechtel-McCone, South America—the South American company? A. That is right.

Q. You were employed by that company during the period from December, 1943 to July, 1945?

A. That is right.

Q. Did you undertake a written contract with that company in December of 1943? A. That is right.

Q. What was the period of time of that employment contract?

A. Around seventeen and a half months. That was on the island.

Q. You were on the island? A. Yes, sir.

Q. Was it one of their 18 months' contracts?

A. That is right.

Q. And did you complete the performance of your work under that 18 months' contract? [86] That is right.

Q. Did you satisfactorily complete it so as to receive the bonus payment due thereunder for satisfactory completion of the contract? A. I sure did.

Q. And when did you return to the States after July, 1945? A. Arrived in the States July 26, 1945.

Q. That is, you returned to this country in July, 1945, July 26th? A. That is right.

Q. Are you about to engage in a venture of your own?

Mr. Sheridan: I object to that as immaterial.

Mr. Chance: I will withdraw the question.

Q. Were you on the island, Bahrein Island, during the months of May to July, 1944? A. That is right.

Q. And what was your position?

A. Boilermaker foreman.

Q. During the months of May to July, 1944?

A. That is right.

(Testimony of Leon J. Tam)

Q. Who was your immediate superior?

A. Ed Gratz.

Q. Ed Gratz? A. Yes. [87]

Q. What was his general position?

A. General boilermaker foreman?

Q. General boilermaker foreman?

A. That is right.

Q. And who was his immediate superior, if you know?

A. Walter Hillman.

Q. And who was Walter Hillman's foreman—strike that. What was his job

A. He was general superintendent.

Q. And who was immediately over Hillman?

A. Roy McAuliffe

Q. What was his position?

A. Project Manager.

Q. Did you have any authority conferred upon you by any representative of the company to discharge any men working under you while you were a boilermaker foreman on Bahrein Island?

A. I had no authority to discharge anybody.

Q. What was your authority in connection with men working under you?

A. If I had somebody that didn't do the work I could have them transferred to another job.

Q. But you did not have the authority to discharge them? A. No, sir. [88]

Q. That would have to be done by your superior?

A. That was done by my superior, yes.

The Court: By which one of your superiors? Was it one whom you have named?

The Witness: Yes, my immediate superior, Edward Gratz.

(Testimony of Leon J. Tam)

Q. By Mr Chance: That is the general boilermaker foreman who had that authority? A. That is right?

Q. But you did not? A. That is right.

Mr. Sheridan: Mr. Tam, will you kindly speak up?

The Witness: Yes.

Q. By Mr. Chance: What work was being done under your supervision from May to July, 1944—withdraw that question. Did you know Doyle McDonald?

A. I did. I met him at that time.

Q. Did he work under you? A. That is right.

Q. In what capacity?

A. Well, he was supposed to be a boilermaker.

Q. He worked as a boilermaker under you?

A. That is right.

Q. And when did he first come to work for you, do you remember?

A. I don't exactly know the date. I know it was May [89] sometime.

Q. 1944? A. That is right

Q. And how long did he work for you?

A. Around six weeks.

Q. What work did you first assign him to do when he was put under your supervision?

A. Well, when he first came to me I put him on a column with another boilermaker.

Q. On a column with another boilermaker?

A. That is right; assembling.

Q. What kind of column was this you put him on?

A. A bubble tower.

Q. And how long did he work on the bubble tower column after you first assigned him to it?

A. He worked on there a couple of weeks.

(Testimony of Leon J. Tam)

Q. Then what happened with reference to him?

A. We had to pull the welders off so we pulled him off and put him down assembling a stack.

Q. What?

A. Put him down on the crude unit assembling a stack.

Q. Assembling a smokestack? A. That is right.

Q. Did he work under you down at the smokestack?

A. That is right. [90]

Q. How long did he work down at the smokestack?

A. Worked on that a couple of weeks.

Q. Was he assembling sections or setting a base or what? A. Setting a base.

Q. Setting a base for the smokestack?

A. Yes. The base was in three sections.

Q. And then after a couple of weeks that he was on the smokestack what did he do.

A. Well, after he was on there a couple of weeks we had welders available for the tower so I pulled him off and put him back on the tower.

Q. Put him back on the same bubble tower column that you assigned him to originally?

A. The same one he left, yes.

Q. Now, did he have when working under you during the first couple of weeks on the bubble tower an Arab coolie crew? A. Coolie crew?

Q. Yes. A. Yes; had plenty of coolies.

Q. How many would you say that he had under him that you observed, under his direction, during the first couple of weeks on the bubble tower?

A. From four to six, anyway. [91]

(Testimony of Leon J. Tam)

Q. And when he was transferred down to the smoke-stack for those two weeks did he have coolies with him?

A. Had the same coolies with him down there.

Q. And had the same number approximately?

A. That is right.

Q. Would they vary from time to time, the number working under him?

A. Probably one or two, but always four on the job at all times.

Q. And when he was transferred back to the bubble tower after he worked on the smokestack did his coolies crew go back with him?

A. That is right.

Q. And how many did he have back there on the bubble tower when he went back the second time? The same number?

A. At least five, anyway.

Q. Had approximately the same crew?

A. The same crew.

Q. That is, the same men?

A. That is right.

Q. Same Arab natives, is that right?

A. The same Arab individuals were kept with him during the entire six weeks period.

Q. What were the duties of the Arab coolies, as you call them? [92]

A. Assigned as boilermaker helpers.

Q. What were they supposed to do in that capacity?

A. Anything the boilermakers asked them to do.

Q. Such as what?

A. Getting materials, getting tools. Helping the boilermaker on the job.

Q. Carrying tools if they were required to do so?

A. That is right.

(Testimony of Leon J. Tam)

Q. Now, will you describe as best you can recall, the condition of this bubble tower column when Mr. McDonald was first assigned to work on it toward the end of May? Can you describe it? Do you recall the condition of the sections of the bubble tower when you first put Mr. McDonald to work on it at the end of May?

A. When Mr. McDonald came there we had two or three sections assembled already and welded.

Q. You had two or three already welded?

A. That is right.

Q. That is to say, the first two or three sections of this bubble tower had already been assembled and welded together when McDonald was assigned to the work at the end of May?

A. That is right.

Q. And was there any other boilermaker working with McDonald when he was assigned and after he was assigned? [93]

A. That is right.

Q. To that bubble tower? A. That is right.

Q. How many boilermakers there?

A. McDonald and another one. Two of them together.

Q. Do you remember the name of the other boilermaker? A. Christianson.

Q. Christianson? A. That is right.

Q. And did he have a crew of Arab coolies working under him that were different from the crew under McDonald? A. He had his own coolies.

Q. How many in his crew?

A. He had four or five.

Q. Each boilermaker has four or five coolies assigned to him to work with him regularly?

A. We figured four or five coolies to each mechanic.

(Testimony of Leon J. Tam)

Q. And that was the general set-up all the way through? A. Yes, sir.

Q. Throughout the island, is that correct?

A. That is right.

Q. Now, did Mr. Christianson and McDonald proceed after he was first assigned to the bubble tower, to assemble additional sections? A. That is right.[94]

Q. To this column? A. That is right.

Q. And how many sections would you say were assembled during those first two weeks that McDonald was on the bubble tower after he came there?

A. I would say two or three sections.

Q. Two or three sections? So there were what—four, five or six sections? A. Assembled?

Q. Yes, assembled? A. That is right.

Q. By the time he was transferred down to the smoke-stack? A. That is right.

Q. Now, can you describe how many sections went into the completed bubble tower column that we are talking about here?

A. I believe there was about 11 sections. I am not sure.

Q. There might have been less?

A. No, there wasn't any less, I don't believe.

Q. And they were how long? What was the height of each section?

A. Well, they varied. They varied from 16 to 20 feet.

Q. From 16 to 20 feet? [95]

A. And 12 feet in diameter.

Q. Some would be 16 feet and some would be 20 feet in diameter or height?

A. 12 foot in diameter.

(Testimony of Leon J. Tam)

Q. So when the assembled column was put together and hoisted with a crane vertically it would have been—

A. About 152 feet. That is to the tip of the valve from the base.

Q. 152 feet from the base to the top of the tower when it was fully assembled?

A. To the tip of the valve.

Q. That is, the vessel was round on top—it was round at the top of the tower?

A. That is right.

Q. Now, the job of these two boilermakers then was to assemble each of these two sections together?

A. That is right.

Q. Now, will you describe for the court the procedure that was followed during the first two weeks that McDonald was assigned to this bubble tower column, by himself and Christianson?

A. Yes.

Q. In the assembling of those two or three sections that you have said were assembled during those first two weeks? [96]

A. That is right.

Q. Tell the judge in your own words the process that was being used?

A. We had built a cribbing for it out of 2 by 12, eight of them on top of one another and nailed them and this section—these towers were laying horizontally and we would take the crane and put each section about three foot apart all along in line on one of the cribbing and we would start assembling them. We would get the crane and raise it and shove it up as close as we could get it and put two turnbuckles on to hold it and used key plates to fair it up. Then we had jacks there that we would put underneath. That would release the crane. We did that to lift it up a little bit or line it up. That was the procedure all the way through.



(Testimony of Leon J. Tam)

Q. So you used turnbuckles, key plates, jacks and the crane?      A. That is right.

Q. For the assembling of each of these sections?

A. That is right.

Q. Can you state whether or not you observed Christianson and McDonald, and particularly McDonald, using turnbuckles along with wedges and jacks and the crane in the assembly of those first few sections he worked on at the bubble tower column before you transferred him down to the [97] smokestack?      A. That is right.

Q. That is, he did use turnbuckles?

A. That is right.

Q. Together with these other instruments?

A. Used turnbuckles and come-alongs—key plates.

Q. What is a “come-along”?

A. A “come-along” is a sort of a ratchet wrench. It has a handle on it and two hooks on it, one on a chain and one on the end of the dog. It is the same as a turnbuckle although you do not turn it. You use a ratchet.

Q. Would you use that sometime instead of a turnbuckle?      A. No, no,—turnbuckles and them.

Q. You use all four of them?      A. That is right.

Q. That is key plates, turnbuckles, come-alongs and jacks?      A. And the jack.

Q. Together with the crane?      A. That is right.

Q. What was the function of the crane in assembling these sections together?

A. Well, we had to use the crane to take the weight off of the cribbing.[98]

Q. For what purpose? For what reason?

A. For assembling each section. They were about from three to four foot apart so we would raise them up just far enough off the cribbing so we could ease them

(Testimony of Leon J. Tam)

up to the other section after we had the lugs welded on and put the turnbuckles on to hold it there and wedge it up in place and release the crane. The crane was finished until we got ready for the next section.

Q. How long would it take to bring one section up to the other so that it was in place? How long would that take? A. Just in place?

Q. Put it in place before welding.

A. Before welding?

Q. Yes.

A. Oh, I would say after you had the lugs on probably a half hour.

Q. How long would it take for the boilermaker to do his job of bringing the section up and fairing it up and getting it ready for the welder to weld?

A. Well, we run from 16 to 20 hours. It varied on some of them.

Q. That was after the crane was released?

A. Some of the ends of the sections were not true.

Q. And it was the boilermaker's job to true them up or fair them up? [99] A. That is right.

Q. And it would take in moving it in place and fairing it up so it was the proper distance for welding about 18 or 20 hours, is that what you say?

A. That is after we release the crane.

Q. Will you describe a turnbuckle, please? That is, will you describe the type of turnbuckles, the size and so on that were actually used, as you have said, by McDonald and Christianson in assembling the first few sections—the first couple of weeks in June?

A. Well, a turnbuckle is a one-inch rod. They have various sizes. That is what we used and there is an eye and a hook on one end. One is right-handed threaded and

(Testimony of Leon J. Tam)

one is a left-hand thread probably 10 or 12 inches long. It had a guide on there in which you put a pin and you turn it and that pulls them in.

Q. That pulls the two sections together?

A. That is right.

The Court: What is there on the sections to which you fasten the turnbuckles?

The Witness: We have a sort of a dog, sort of an oblong—the turnbuckle is threaded through here and threaded through here and you put the rod in and one is a left-hand thread—

The Court: That I understand. That is a turnbuckle.[100] But you have to fasten it on the two pieces of the tower sections.

The Witness: We put a plate on there, a one-inch plate.

Mr. Chance: Do you call that a dog or a clip?

The Witness: Call it a clip.

Q. By Mr. Chance: And you would put one end of the turnbuckle in the clip at the end of the section and the other end in the end of the new section that you were assembling? A. Yes, the hook in the other one.

Q. And you would by turning the turnbuckle bring the two together? A. Yes.

Q. Would you take the weight off of the new section by having the crane simply lift it up?

A. That is right.

Q. At the time you were working the turnbuckle?

A. That is right.

Q. Did you have more than one turnbuckle attached to the new and old sections in bringing them together?

A. Two, one on each side and pull them up uniformly.

(Testimony of Leon J. Tam)

Q. Would you have them up about the middle of the section? A. About the center, yes.

Q. That is, they would be about six feet off the [101] ground? A. Yes, sir.

Q. Plus the height of the crib?

A. I would say about seven foot on account of the cribbing.

Q. I would like to show you a tool and ask you to tell the court what it is. A. That is a turnbuckle.

Q. What is the dimension of that?

A. The overall length?

Q. What is the dimension? A. A one-inch rod.

Q. That is the swivel screw, is it? A. Yes.

Q. And that is one inch in diameter?

A. That is right.

Q. And is this substantially the size and type of turnbuckle that was in use by Christianson and McDonald on the bubble tower sections that they were assembling the first couple of weeks on that job?

A. Same size but one had only one eye and the other end had a hook.

Q. One end had an eye and the other end had a hook?

A. Yes. The other end had a hook. Instead of having an eye it had a hook. We would hook that in a hole in the [102] plate, this one, and put two lugs on and put a pin through.

Mr. Chance: Your Honor, I do not believe we need to offer this in evidence.

The Court: I do not think it is necessary.

Mr. Chance: I have here a drawing which I would like to have marked for identification as defendant's Exhibit 1. I show Mr. Tram this drawing and ask him if

(Testimony of Leon J. Tam)

this, roughly speaking, is a fair representation of three sections of a column bubble tower of the type that we are referring to in this testimony? A. That is right.

Q. And one of the sections at the right-hand end of the column has not yet been fully assembled?

A. Yes, that is right.

Q. And it has a crane at the end of the new section with a sling around the middle of the new section and has the weight slightly off the new section?

A. That is right.

Q. By the hoist of the crane?

A. The only difference here, the cribbing here was a different assembly. That is, it is wooden cribbing.

Q. This drawing shows the section was not lying identically the same as the section was that you had on the bubble tower?

A. That is right, yes. The crane was setting out to [103] one side. We had put the crane on the side to lift it but it works the same identical thing.

Mr. Chance: For purposes of illustration I would like to offer this.

The Court: Do you have any objection?

Mr. Sheridan: No objection.

The Court: It will be received in evidence for the purpose of illustrating the testimony.

The Clerk: Defendants' Exhibit A.

(The document referred to was marked as Defendants' Exhibit A, and was received in evidence.)

Q. By Mr. Chance: After the boilermaker did his work of bringing the two sections into juxtaposition and fairing up the ends of it, which took, as you say, between 18 and 20 hours, was there another crew that worked—

(Testimony of Leon J. Tam)

accomplished another function in completing the assembly of that section?      A. No.

Q. What happened after the boilermaker had his work completed?

A. After he completed fairing up that section the welders would start welding it and probably he would have to get a buffer and get the other sections buffed off ready for assembling, which would be probably two and a half days.

Q. It took about two and a half days for the welders to complete the welding of that particular section? [104]

A. That is right.

Q. And that was true in each case of each section assembled?      A. Put three welders on there.

Q. That was the normal number of welders?

A. That is right.

Q. And was that a finished welding job that they had to do?      A. That is right.

Q. Was that called code welding?

A. Code welding, yes.

Q. That was not tacking or burning or anything?

A. No. Had to be a code welder to do the work.

Q. Now, would the crane be released from the section being assembled and would it be free for two and a half days before the next section was brought up?

A. That is right.

Q. Released to work on some other job?

A. Work on some other job until the welders were ready to make a turn and then they get the crane back and the crane turned it over.

(Testimony of Leon J. Tam)

Q. But when the crane finished a bubble tower it would go to another job and when that was finished it would go back to the bubble tower?

A. It would come back whenever we were ready for a [105] roll and they weren't busy.

Q. I see. To your knowledge and according to your observations can you say whether or not there were any turnbuckles actually at the site of the bubble tower during the first two weeks that McDonald was working on the bubble tower?

A. That is right, there was.

Q. You saw them there? A. Yes, sir.

Q. Now, to your knowledge, to your observation, can you state whether or not McDonald himself used the turnbuckles in assembling these prior sections during the first two weeks he was working on the bubble tower?

A. They used them on every section.

Q. Used them on every section?

A. That is right.

Mr. Sheridan: That is not an answer to the question. The question was, did McDonald use the turnbuckles?

Mr. Chance: Read the question.

(Question read.)

Q. By Mr Chance: Did McDonald use the turnbuckles on assembling these prior sections when he was working on the bubble tower the first two weeks? A. Yes.

Q. You observed that? [106] A. Yes, sir.

Q. You observed the turnbuckles? A. Yes, sir.

Q. There is no doubt in your mind about that?

A. Yes.

Q. That is, there is no doubt in your mind?

A. No doubt, no.

(Testimony of Leon J. Tam)

Q. Was it the common, usual and customary practice for boilermakers generally on Bahrein Island under your supervision and to your knowledge and observation, to use turnbuckles in the assembly of towers and vessels of the character of this bubble tower we are talking about?

A. Well, I started in the hard way and I have used them ever since I have been in the game and everybody else has.

Q. Now, I think that counsel could very well object to that answer. Will you read the question?

(Question read.)

A. That is right.

Q. It was the common practice?

A. That is right.

Q. Did the other boilermakers under your supervision use turnbuckles in the assembly of other vessels and towers on this job?      A. That is right. [107]

Mr. Sheridan: Counsel, I will stipulate any boiler-maker under Mr. Tam will use turnbuckles.

Mr. Chance: Thank you for the stipulation, counsel.

Q. Will you state whether or not it is a fact that the sections of the bubble tower, of this particular bubble tower and other towers were assembled by boilermakers under your supervision after July 10, 1944, by use of turnbuckles, as well as other equipment?

A. That is right.

Q. Did you issue any instructions to Doyle McDonald on or about July 9, 1944, with respect to the assembly of a section in this bubble tower?

A. Yes. I told him to get everything ready for the next section.



(Testimony of Leon J. Tam)

Q. Will you state the time when you on that day, when you told him to get everything ready for the next section?

A. I told him in the morning, and I went back there about a quarter of two and told him we were going to work one hour overtime on account of wanting to use the crane some place else in the morning, to get that section together.

Q. Now, who was present in the morning, if anyone beside yourself and Mr. McDonald, when you told him to get everything ready for the assembly of the section?

A. All the crane operators were there and the coolies were there. [108]

Q. Anybody else that you remember?

A. I don't remember offhand, no.

Q. Now, you say that you went back the second time at about a quarter of two in the afternoon of July 9th?

A. That is right.

Q. And issued additional instructions to McDonald?

A. That is right.

Q. What did you tell him? First of all, who else was present besides yourself and McDonald at a quarter of two that afternoon?

A. Mr. Einer, the welding inspector.

Q. That was a quarter of two when he was there?

A. About a quarter of two, yes.

Q. What is his name?

A. Einer Arhendt, I believe it is.

Q. Can you spell that for us?

A. I don't know how to spell it.

Q. If I said it is E-i-n-e-r A-h-r-e-n-d-t, would that refresh your recollection?

A. That is about it.

(Testimony of Leon J. Tam)

Q. He was a welding inspector?

A. That is right.

Q. Who was he employed by?

A. A. L. Smith.

Q. By whom was he employed at the time, on this afternoon of July 9th? [109]

A. Why, he was a welding inspector for Bechtel-McCone and was sent over there by A. L. Smith.

Q. Was he working for the Bahrein Petroleum Company, Limited, do you know?

A. He was working for Bechtel-McCone on this particular tower. We had some A. L. Smith vessels there and we had some coming in and the ones that were on the island were completed.

Q. Was that A. L. Smith or A. O. Smith?

A. A. O. Smith.

Q. Was that company manufacturing vessels of this type?

A. Vessels and welding rods and so forth.

Q. And he was working for A. O. Smith Company?

A. That is right.

Q. Now, was anybody else present beside yourself and Mr. McDonald and Einer Ahrendt at a quarter of two on July 9th?

A. The riggers were there.

Q. That is, the crane riggers?

A. Crane operators and riggers.

Q. Do you mean the crane riggers?

A. Crane riggers, yes.

Q. Working under the crane operator?

A. That is right. [110]

Q. Was anybody else there?

A. Not that I know of, no.

(Testimony of Leon J. Tam)

Q. Were there any coolies there?

A. Coolies were there, yes.

Q. Were there any welders there?

A. Three welders.

Q. So I am correct in stating that yourself, McDonald, Einer Ahrendt, the crane operator, crane riggers, coolies—that is, McDonald's coolies?

A. Yes, sir.

Q. And the three welders?

A. Three welders.

Q. Were all present?

A. That is right.

Q. At the time you arrived at a quarter of two?

A. That is right.

Q. Now, what did you say at that time?

A. I told them they would have to stay over and assemble the section until three o'clock. That is, the riggers came an hour later and worked one hour later than we did.

Q. You told them to stay over?

A. That is right.

Q. In other words, his normal quitting time would be two o'clock? [111]

A. Two o'clock is when we quit.

Q. The end of an eight-hour shift?

A. Yes.

Q. Was at two o'clock?

A. That is right.

Q. And the crane crew worked a different shift, did they?

A. Yes. They worked a different shift than we did. They came an hour later.

Q. And worked an hour later.

A. That is right.

Q. So their normal closing hour was three o'clock in the afternoon?

A. That is right

(Testimony of Leon J. Tam)

Q. Why did you tell McDonald that you wanted him to work overtime that afternoon?

A. I told him we had to relieve the crane in the morning and we would get that section up close enough so we could release the crane and we could fair it up later.

Q. And did you say anything else to Mr. McDonald at a quarter of two that afternoon?

A. Not at a quarter of two, no.

Q. Then what did you do?

A. Then I had some other men working on another job, working overtime, so I went down there. [112]

Q. That was at a different location?

A. Different location, yes. I come back about 2:30 and the crane had just taken a lift on the tower. Probably it was within an inch or inch and a half of the shell and Mac was just standing there. The riggers were standing there and I said, "Well, what is the matter here? Let us get going here." I said, "We have to release this crane in the morning." I said, "Where are the turnbuckles?" He said, "I am no work horse."

Then he started blowing off.

Q. What else did he say?

A. He said, "To hell with you."

Q. What else did he say, if you can remember?

A. He said, "You ought to have a truck to get that stuff." I said, "You don't need a truck to get turnbuckles." I said, "They are right down there by the stack in a box."

So he says, "I am getting tired of taking your sass," or some such thing, "I am quitting."

So I was standing below the staging and I started to walk away and he came out there and gave me a shove

(Testimony of Leon J. Tam)

and put his dukes up and started cussing. I told him, I said, "Be careful, McDonald, and use your head." He did blow off, and I said, "Now, you are through working for me." I said, "You are through now," so he went off to the office, I guess. I don't know where he went. I didn't see him. So I grabbed [113] the coolies and went down and got the turnbuckles and came back and got the sections together before three o'clock.

Q. You put the turnbuckles on the two sections and brought them together?

A. That is right.

Q. Were there coolies present—now, let us go back here to get this complete. When you came back at 2:30 that was the third time that day on July 9th?

A. That is right.

Q. You came back to where McDonald was and that was about 2:30 in the afternoon?

A. About 2:30.

Q. And who was present? Let me put it this way. Were the same persons present at 2:30 when you came back?

A. That is right.

Q. And were present at a quarter of two that you told us about?

A. That is right.

Q. Were the coolies there?

A. The coolies and the welders and the riggers and inspector Einer.

Q. The crane operator?

A. Yes, the crane operator.

Q. And the crane riggers?

A. Crane riggers. [114]

Q. Welders? A. Welders.

Q. Coolies? A. That is right.

(Testimony of Leon J. Tam)

Q. How many coolies?

A. There must have been four or five of ours besides the welders' coolies.

Q. There were no other boilermakers there?

A. No, no other boilermakers. Didn't need only one.

Q. Were those coolies Mr. McDonald's coolies?

A. That is right.

Q. They were the regular coolie crew?

A. That is right.

Q. They had not quit at two o'clock when the normal hours were completed?      A. No.

Q. They were working overtime?

A. They were working overtime, yes.

Q. Now, where was McDonald standing when you came on the scene at 2:30?

A. Standing on a platform. They had horses there, staging. He was standing on the staging probably a foot and a half off of the ground.

Q. Was that on the cribbing or separate from the cribbing? [115]

A. That is separate from the cribbing. We had 12-foot horses that we just moved along with the sections.

Q. And he was standing about a foot and a half off of the ground on that staging?

A. That is right.

Q. That is, he was only standing on a plank?

A. Yes, a 2 by 12.

Q. About a foot and a half off the ground?

A. That is right.

(Testimony of Leon J. Tam)

Q. When you came up to him how close did you come when you said, "What is the matter here? Let us get going."

A. I believe at that time I was right up to him.

Q. Within a foot or two?

A. Within a foot or two, yes .

Q. Now, when you had this conversation, this first part of the conversation with him when you asked him where were the turnbuckles and he told you he was no pack horse and you told him to go get them and he told you he was quitting—

A. That is right.

Q. Where did that part of the conversation take place? Did he remain on the scaffold or staging or did he come down on the ground?

A. He was up on the staging at that time.

Q. Now when in relation to his statement that he was quitting did he come down off of the staging and onto the [116] ground?

A. He came down off the staging when I started to walk away.

Q. That is after he said he was quitting?

A. He said he was going to quit; he wouldn't take orders from me, and I said, "That is up to you," so I started to walk away and he came down and gave me a shove and put his dukes up and I told him, "Use your head, Mac, be careful," and then he started to cussing and using abusive language, and I said, "Well, by gosh, you are through working for me now," so he turned around and left.

(Testimony of Leon J. Tam)

Q. At the time that he said he was quitting, that he was tired of your sass and he was quitting—

A. That is right.

Q. He was still on the staging at that time?

A. That is right.

Q. And did you turn and walk away before he got down off of the scaffolding?

A. Yes, I believe he did. I turned and walked away before he got down.

Q. Or staging? A. Yes, sir.

Q. How far had you gone from the staging before he came up and shoved you?

A. About ten or 15 feet. [117]

Q. You walked away 10 or 15 feet and he came up to you and gave you a shove? A. That is right.

Q. Then you both squared away?

A. That is right.

Q. Did either one of you—did either take a poke at the other? A. No, there was no pokes.

Q. How far were you when you squared away from each other? A. Oh, probably two foot.

Q. And it was then that you said, "You are through with me, you are not going to work for me any more," or words to that effect?

A. After he started getting tough I told him, "Now you are through working for me."

Q. Now, after he turned and went away in what direction did he go?

A. I never paid no attention to him. I went over and got the coolies and went after the turnbuckles when he left.



(Testimony of Leon J. Tam)

Q. Did you observe whether or not he went over and had a talk with Einer?

A. I don't believe he did. I am not sure.

Q. How far was Einer from where McDonald was standing on the scaffolding? [118]

A. Oh, probably 10 or 12 feet.

Q. Was he under a canopy or under a tent or anything?

A. No, he wasn't at the time, no.

Q. He was 10 or 12 feet away from McDonald who was standing on the staging at the first part of the conversation?

A. That is right.

Q. Did Einer remain in the same position during the time this altercation took place with McDonald?

A. I believe he did, yes.

Q. And did you have any further conversation of any kind or character with McDonald after this last that you have referred to?

A. I never seen him any more.

Q. Until, I take it, today?

A. Up until now.

Q. And what did you do immediately after McDonald walked away and after you had squared away with each other and then he turned away?

A. After McDonald walked away I went over and got the coolies and got the turnbuckles and came back and put them on and released the crane. We were through before three o'clock.

Q. How far did you go from the site of the bubble tower where you had the altercation with McDonald to get the turnbuckles? What distance was it?

A. About 200 yards. [119]

(Testimony of Leon J. Tam)

Q. What is that, about a good size city block or two?

A. About a block or a block and a half.

Q. A city block? A. Yes, sir.

Q. A good size city block?

A. About the size of a city block.

Q. All right. And when you went down to the smokestack to get these—let me ask you this. Where did you say you went to get these turnbuckles that afternoon?

A. I went down to the smokestack.

Q. And whereabouts at the smokestack were these turnbuckles?

A. It was about 200 yards north of the vessel—bubble tower.

Q. 200 yards north of the bubble tower?

A. That is right.

Q. Down at the smokestack? A. That is right.

Q. And were the turnbuckles lying on the ground or where were they?

A. They were in a big tool box.

Q. In a tool box? A. Yes.

Q. Is the tool box right near the smokestack?

A. That is right. [120]

Q. What is the size of the tool box?

A. About 3 by 7 and about 3 foot deep.

Q. Three foot deep, and how high?

A. Three foot.

Q. How long? A. About 7 foot.

Q. So it was three by three by seven feet?

A. That is right.

Q. And was there a top on it? You lifted the top?

A. There was a lid on it, yes.

(Testimony of Leon J. Tam)

Q. Did you lift it or did the coolies lift it?

A. The coolies lifted it.

Q. And did you order the coolies—did the coolies reach down inside and pick up the turnbuckles?

A. Picked up the turnbuckles and took them back to the column.

Q. Who did that? You or the coolies?

A. Coolies.

Q. The coolies reached down into the tool box and picked up the turnbuckles and carried them back?

A. Two turnbuckles.

Q. And did the coolies carry them back from the tool box to the bubble tower?      A. That is right.

Q. You did not carry them yourself? [121]

A. No.

Q. Did you have a truck?      A. No truck.

Q. Did you walk down there?

A. Yes, walked. I walked for 18 months around there. Didn't have no truck.

Q. What was the situation with reference to trucks being available to carry tools and equipment for boiler-makers?

A. The trucks on this project job was very scarce. In fact, we didn't have hardly any trucks on the job. The surveyors had probably a small pick-up they used to run around with. When they came around they would help us, but we carried most of the stuff.

Q. Did you have trucks available for parts of the time for carrying equipment?

A. If it was heavy equipment I would make arrangements to try to get one, but light stuff we didn't need one.

(Testimony of Leon J. Tam)

Q. Did the boilermakers generally have their coolies carry the tools and equipment around?

A. That is right.

Q. Was that what the coolies were for, to carry the stuff around?

A. That is right. That come under boilermakers' helpers. [122]

Q. How many trucks would you say were on the island in July of 1944 that were owned by or being used by this construction company in erecting this refinery?

A. I could not answer that because they were building a causeway out there.

Q. How many were available—I will withdraw that.

A. Well, I will tell you. In the boilermaker department we only had a pickup and a truck and that is for all tank work and all outside of the other trucks we had nothing to do with them.

Q. That was in the boilermaker department?

A. That is right.

Q. You had one pick-up and one truck?

A. That is right.

Q. What was the size of the truck?

A. Ton and a half.

Q. What was the size of the pick-up?

A. Just a regular pick-up.

Q. Ford pick-up? A. That is right.

Q. Those were the only two available?

A. That is all.

Q. I don't think you were in the courtroom when this testimony was given, but I will ask you whether or not during the first two weeks that McDonald was working on the [123] bubble tower under you, the first couple weeks of June—

A. That is right.

(Testimony of Leon J. Tam)

Q. Did he at any time demonstrate to you that turnbuckles could not be used satisfactorily in the assembly of the sections of this particular bubble tower?

A. No, sir.

Q. Was there anything like that? A. No, sir.

Q. That is, he at no time—

A. At no time did he demonstrate anything to me.

Q. Did he state to you in substance or effect that the turnbuckles could not be used in assembling these sections?

A. He must have been talking to somebody else. He wasn't talking to me.

Q. The answer is no then? A. That is no.

The Court: Had you had any difficulty or any argument or any discussion with reference to the procedure used?

The Witness: No.

The Court: In this construction work?

The Witness: No.

The Court: Your relationship with him had been friendly so far as you know?

The Witness: That is right.

The Court: That is all. I just wanted to clear that up. [124] Are you through with your direct examination?

Mr. Chance: May I review my notes for a moment?

The Court: You want to finish with this witness tonight?

Mr. Chance: I just want to be sure that I have covered everything. I would like to reserve the right to further examine the witness, but I believe I have completed.

The Court: You may cross examine.

Mr. Sheridan: It will take me a half hour to cross examine this witness. I do not want to impose on the

(Testimony of Leon J. Tam)

time of this court by starting in and taking an "attorney's half hour".

Mr. Chance: I wonder if we might request your indulgence? It is an awful request to make, I know, your Honor, because your Honor may have some other engagements, but this gentleman was kind enough to come down from the north and he has a business that he is about to enter upon for himself and he told me that he has to be in San Francisco tomorrow morning. He is going to drive all night tonight and he has to be in San Francisco tomorrow, and then he has to drive back down to San Luis Obispo tomorrow night. I told him that it was going to be a pretty crowded schedule.

The Court: I will continue until five o'clock, but not beyond that. If the examination of this witness is not completed by that time we will have to adjourn until tomorrow morning and this witness will have to remain over. [125]

Mr. Chance: Thank you very much, your Honor.

#### Cross-Examination

By Mr. Sheridan:

Q. Now, Mr. Tam, in your deposition at page 6, referring to Mr. Doyle McDonald, line 11, the question was asked:

"Did you know Mr. Doyle McDonald?"

"A. Yes, I knew him.

"Q. And did he work for you?"

"A. He worked for me about six or seven weeks.

"Q. He worked as a boilermaker under you, did he?"

"A. He worked as a boilermaker. He was no boiler-maker though.

(Testimony of Leon J. Tam)

"Q. What generally were his capabilities as you observed them based on your experience in boilermaking?

"A. I would say nothing but a damned crab according to my opinion, crabbing all the time.

"Q. How about his ability to perform the duties of a boilermaker? As a boilermaker should be able to perform them?

"A. He was no boilermaker at all. I don't think he ever worked at the boilermaker game until the war started, so far as boilermaking is concerned." [126]

Now, that was your opinion at the time this deposition was taken? A. That is right.

Q. On September 15, 1945 in San Francisco, was it not? A. What is the date on that?

Q. September 15, 1945. A. Yes.

Q. And that is still your opinion of Mr. McDonald?

A. That is right.

Q. But despite that opinion of Mr. McDonald he was the only boilermaker who was joining the sections of this tower together on July 9th, isn't that true?

A. That is right.

Q. Did you have other boilermakers working under you at that time on July 9th?

A. I had about 25 of them working under me.

Q. Were they full-fledged boilermakers, capable boiler-makers?

A. Well, I would not say that now. You want to put me on the pan.

Q. Were those other 25 boilermakers what you would call boilermakers?

A. Some of them were good boilermakers, yes.

Mr. Chance: I object to that.

(Testimony of Leon J. Tam)

The Witness: But the average of them weren't boiler-[127] makers and I tell them that.

Q. By Mr. Sheridan: But McDonald was not a boilermaker?

A. No, he was not a boilermaker.

Q. Now, Mr. Tam, on page 7 of your deposition, line 1, the question was asked:

"Q. Did he refuse to follow your orders on any occasion?"

That is referring to Mr. McDonald. The answer was,

"A. Yes, he did."

Mr. Chance: What line is that?

Mr. Sheridan: Lines 1 and 2 on page 7.

Q. Now, Mr. Tam, would you tell us what Mr. McDonald did in the way of refusing to follow your orders?

A. Well, he was on this tower around July 27th, I think, and I asked him at that time to get everything ready and then when I went over there at a quarter of two I told him again we were going to assemble that section and I went back there at 2:30 and he had nothing ready. He didn't have the turnbuckles on the job.

Q. Isn't it a fact, Mr. Tam, when you came back at 2:30 on the afternoon of July 29th and not the 27th, isn't it a fact, Mr. Tam, that at the time you came back at 2:30 that the crane was not holding up the weight of the 20-ton section but that the cable was slack? [128]

A. The cable was slack?

Q. Isn't that a fact, that the cable line was slack around the cylinder section?

A. Well, I would not say whether it was or not.

Q. Answer the question yes or no.

Mr. Chance: He may explain it.



(Testimony of Leon J. Tam)

The Court: He says he cannot say. That probably means he does not remember.

The Witness: I don't remember whether it was slack or not at that time.

Q. By Mr. Sheridan: You testified on your direct examination that it was carrying the weight of the section. My question now is at the time you came back at 2:30 isn't it a fact that the line was slack?

A. I don't know. It could have been when I went after the turnbuckles. The riggers had raised it up and put it over there and were waiting for the turnbuckles.

Q. That is all I want.

Mr. Chance: In other words, it wasn't slack when you brought the turnbuckles back?

The Court: Wait a minute. Let Mr. Sheridan finish his cross examination.

Mr. Sheridan: Do not pursue that any further. He has already answered satisfactorily.

Q. Now, Mr. Tam, at page 9 of your deposition, line 8, [129] the question was asked:

"What equipment had you been using on these previous occasions?"

That is referring to the occasions when you were fixing other sections of the bubble tower.

A. That is right.

Q. The answer was:

"The same equipment we used on all of them.

"Q. What was that equipment?

"A. Turnbuckles, key plates and some lugs were welded on."

A. That is right.

(Testimony of Leon J. Tam)

Q. Isn't it or is it not true you used turnbuckles, key plates and lugs in putting all of these sections of the tower together? A. Yes, that is true, sure.

Q. Now, did you have any steam boat jacks which you used in joining these tower sections?

A. No. We did not have no steam boat jacks. We had hydraulic jacks.

Q. No steam boat jacks? None at all? A. No.

Q. Did you have any steam boat jacks on the island?

A. To my estimation there was none, I ever seen on the island. [130]

Mr. Chance: But you had hydraulic jacks?

The Witness: All hydraulic jacks.

The Court: I think it is better to let Mr. Sheridan proceed with his cross examination.

Mr. Chance: Pardon me, your Honor.

Q. By Mr. Sheridan: Now, Mr. Tam, did you tell Mr. McDonald prior to two o'clock to remain on the job and work one hour overtime? A. That is right.

Q. You personally told him that at a quarter of two?

A. I told him and told the welders and riggers myself personally.

Q. Did Mr. McDonald obey that order?

A. He did.

Q. Now, Mr. Tam, at page 11 of your deposition the question was asked at line 18: "When you came back around 2:30 did you see Mr. McDonald there?"

"A. He was standing there. He had not done a darn thing. I asked him why he hadn't gotten the turnbuckles."

Now, Mr. Tam, at the time you returned at 2:30 as you testified, isn't it a fact that key plates had been fastened to each side of the vessel and those key plates

(Testimony of Leon J. Tam)

had been wedged into shape so that the vessels were approximately one inch from meeting? [131]

A. You say key plates?

Q. Key plates had been tacked to the side and wedges inserted?

A. There was no key plates on the vessel at 2:30.

Q. Wasn't it a fact that when you arrived Mr. McDonald was standing on the scaffolding with a 12-pound maul in his hand, having finished striking the wedge and finishing getting the key plates in?

A. He might have had a 12-pound maul, but he never put no key plates on. That is a fact.

Q. Would he use a maul to apply a turnbuckle?

A. No, you wouldn't.

Q. What would you use the maul for?

A. Driving pins in the key plates and wedges and so forth.

Q. Now, Mr. Tam, you spoke of a tool box over near the smokestack approximately 200 yards from the bubble tower?

A. That is right.

Q. Isn't it a fact that the only tool box over there was one used by the pipe fitters to keep their wrenches in?

A. No, sir.

Q. It is your testimony that there was a tool box there for the use of the boilermakers?

A. That is right.

Q. What did they keep in those tool boxes? [132]

A. Hammers, wrenches, turnbuckles, jacks.

Q. What kind of jacks? A. Hydraulic jacks.

Q. How much weight would the hydraulic jacks carry? A. Eight, twelve, 20 tons.

Q. Did you have any 50-ton jacks?

A. We had them on the job, yes.

(Testimony of Leon J. Tam)

Q. How many?

A. Well, we didn't have any right on the particular work I had, but they were there. In fact, I think the riggers had two on the job. They belonged to the riggers.

Q. You are sure there were 12-ton jacks on the job?

A. That is right.

Q. Isn't it a fact the only hydraulic jacks made are 10, 15, 20, 25 and 50-ton? A. What?

Q. Isn't it a fact that hydraulic jacks are only made in 5, 10, 15, 25, 30 and so forth tons?

A. If I am not mistaken they had 12-ton jacks over there—hydraulic jacks.

Q. You are not sure, though, are you?

A. Damn sure.

The Court: You will have to be careful about your language.

The Witness: Pardon me. [133]

Q. By Mr. Sheridan: Now, Mr. Tam, isn't it a fact that on July 9, 1945, at two o'clock, the regular work day had ceased? A. That is right.

Q. When the regular work day ceased all those who were not ordered to work overtime ceased working on the job, did they not?

A. The boilermakers and riggers worked until three o'clock.

Q. Excuse me, but that is correct?

A. That is right.

Q. That is in the evidence before so we understand that, but the riggers came to work an hour later than your crew? A. That is right.

Q. And they worked an hour later?

A. That is right.

(Testimony of Leon J. Tam)

Q. But with reference to the boilermakers and the boilermaker helpers and the other regular help over whom you were foreman—

A. That is right.

Q. —when the two o'clock whistle blew their day was ended and they left the job, did they not?

A. They left if I had not asked them to work overtime?

Q. If you had not asked them to work overtime? [134]

A. That is right.

Q. Now, the coolies would leave just the same as the other regular help, would they not?

A. That is right.

Q. Now, isn't it a fact that on this day at two o'clock all the coolies left the job?

A. No, they didn't leave the job.

Q. Isn't it a fact none of them were working overtime on July 9th?

A. What?

Q. Isn't it a fact that none of the coolies worked overtime on July 9th on the bubble tower?

A. The coolies McDonald had were on the job when I went over there at 2:30. They went up and got the turnbuckles with me.

Q. Was Mr. Christianson with Mr. McDonald at that time?

A. No, sir.

Q. Now, Mr. Tam, was Mr. Christianson, the other boilermaker, working with Mr. McDonald at any time during the construction of this bubble tower?

A. At any time?

Q. At any time.

A. Yes, he was.

Q. Was he working with Mr. McDonald prior to the overtime period on July 9th? [135]

A. No, he was not even on the job on July 9th.

(Testimony of Leon J. Tam)

Q. Where was Mr. Christianson on that day, if you know?

A. On that day he was working up in the field on another tower.

Q. Was Mr. Christianson a boilermaker?

A. Yes, sir.

Q. I mean was he a good boilermaker—what you would call a good boilermaker?

A. I would say he was a good boilermaker, yes.

Q. Isn't it a fact, Mr. Tam, that Mr. Christianson arrived on Bahrein Island about two days after McDonald left?

A. After McDonald left?

Q. Yes.

A. If I remember right, he had been there six or eight months before McDonald arrived there.

Q. Isn't it a fact he arrived about the 14th day of July, 1944?

A. No.

Q. Mr. Tam, in your deposition at page 24, the question was asked at line 3:

"While McDonald was working at the smokestack was any work being done on the bubble tower?"

"A. No, there was none. [136]"

"Q. When you got a new section of the bubble tower in place how did you attach it to the assembled portion?"

"A. Well, we would have to put key plates on to draw it right up to these shims. Had to weld lugs on like one-inch nuts and then use drift pins and we put them about every two foot apart all the way around."

Then at page 25, line 12, the question was asked:

"Q. And the turnbuckles pulled the section over to the assembled section?"

"A. Well, got it up far enough to release the crane."

A. That is right.

(Testimony of Leon J. Tam)

Q. And continuing:

"Then we used key plates."

A. That is right.

Q. "Welded lugs on and we had the key plates and that pulled it right up.

"Q. That is the final cinch?

A. Yes; but the function of the turnbuckle was merely to preliminarily jockey these pieces of material into position so that the key plates could be put on and the final drawing together of these vessels could take place." [137]

Is that not true? A. That is right.

Q. Now, Mr. Tam, I am a little bit like the coolies. I am not strong enough to carry this big turnbuckle, but I show you this turnbuckle. It is substantially similar to the one we spoke about?

A. They are the same thing.

Q. And this is a jaw-to-eye turnbuckle?

A. Yes.

Q. Now, Mr. Tam, in putting the turnbuckle on the side of a 20-ton vessel on one side and we will say a 60-ton completed section on the other, what did you use to keep the turnbuckle out from the side of the vessel?

A. Welded one-inch lugs on the shell.

Q. Those lugs are called ears, are they not?

A. They call them ears. They have several names for them.

Q. Call them anything you want?

A. That is right.

Q. Now, were these ears tacked onto the side of the vessel? A. Welded on.

Q. Welded onto the side of the vessel?

A. That is right.

(Testimony of Leon J. Tam)

Q. How far out from the side of the vessel did the [138] ears or lugs extend?

A. Well, it would have to extend out far enough so you could turn the turnbuckle. If you put that one on you would put it out about two inches. You could turn that one.

Q. With this type—with the big one?

A. That would have to be out about three inches or probably four inches. I never measured it.

Q. Now, when that turnbuckle was out approximately four inches from the side of the vessel and it was welded onto the ears and your bolt was put through on the one side and the eye was hooked up on the other, then your turnbuckle was ready for tightening, was it not?

A. That is right.

Q. And what did you use to tighten the turnbuckle with? A. Fitting-up pipe.

Q. How long is a fitting-up pipe?

A. Around three foot long.

Q. Now, with a three foot long fitting-up pipe and your turnbuckle setting four inches out from the side of the vessel—

A. That is right.

Q. It would only be possible for you to take partial strokes, would it not? A. That is right.

Q. On your turnbuckle? [139]

A. That is right.

Q. How long would it take or how many partial strokes would it take with a three-foot pipe to tighten up a turnbuckle 24 inches?

A. According to how far the shells were apart.



(Testimony of Leon J. Tam)

Q. Say they were six inches apart and we were drawing them together?

A. Probably ten minutes.

Q. Do you think you could do it in ten minutes?

A. Yes.

Q. When you got your turnbuckle on this side of the vessel tightened up about one-third of the way—no, strike that.

When you started up with your turnbuckle on this side of the vessel did you twist it clear up and then go over to the other side and put on your turnbuckle and tighten it up?

A. Tighten both sides uniform. In fact we had the riggers helping us too.

Q. The riggers would help you?

A. They would take one side and we the other.

Q. You would tell them—didn't you have to tell them?

A. Didn't have to tell them. They knew they were as good as some of the boilermakers we had.

Q. Would you have some signal between you as to when to pull the drift bar so they would turn uniformly?  
[140]

A. Didn't have to have as long as there was slack on the turnbuckle. If there was slack on the turnbuckle they would keep coming up.

Q. If one turnbuckle on one side was tightened up too much what would happen to the other turnbuckle?

A. We would tighten it.

Q. Oidin't you have to ask the fellow on the other side to back up until you could get your turnbuckle to working again?  
A. No.

(Testimony of Leon J. Tam)

Q. If they started to cramp and bind what would you do?

A. If they were used right they don't cramp and bind.

Q. I am not talking about ideal conditions. These turnbuckles did cramp on you at times, didn't they?

A. I don't think so.

Q. Well, you had some Joe McGee's. Didn't they tighten and cramp on the Joe McGee's?

A. Yes. They put pipes on the gosh darn bars. That is why they done it.

Q. Stripped the threads on them?

A. Stripped some of them, yes. Sure you can strip them.

Mr. Sheridan: That is all.

Mr. Chance: Does your Honor know what a Joe McGee is? [141]

The Court: No.

Mr. Sheridan: There is only one more question, Mr. Tam. In the 35 years that you have been a boilermaker you have used turnbuckles considerably, have you not?

A. That is right.

Q. Could you tell the court what the working stress of a one-inch turnbuckle is?

The Court: We are going to take a short recess. At the rate we are going I do not know how you are going to finish with this witness.

Mr. Sheridan: I have one question and then I am through.

(Testimony of Leon J. Tam)

Q. Mr. Tam, will you tell the court what the working stress of a one-inch turnbuckle is?

A. I would say around 20 ton.

Q. The working stress where it is pulling against a weight?

A. What do you mean? Pulling strength—pulling stress?

Q. Yes, the pulling stress of a one-inch turnbuckle.

A. Just the one turnbuckle?

Q. Yes, one turnbuckle.

A. You want to know what a one-inch—

Mr. Chance: He has already answered that question. He said 20 tons. [142]

Mr. Sheridan: That is your answer, 20 tons?

The Witness: Yes, sir.

Mr. Sheridan: Against friction?

The Witness: Yes.

Mr. Sheridan: That is all.

Mr. Chance: No further questions.

The Court: This witness may be excused. We will adjourn now until 10:00 o'clock tomorrow morning.

(Whereupon, at 4:45 o'clock p.m., a recess was had in the above-entitled matter until 10:00 o'clock a.m., Tuesday, October 2, 1945.) [143]

Los Angeles, California, Tuesday, October 2, 1945  
10:00 A.M.

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The Court: Are you ready to proceed, gentlemen?

Mr. Chance: We are ready, your Honor.

Mr. Sheridan: Yes, your Honor. If the court please, and with the indulgence of counsel, I would like to ask to put on one witness out of order for a short examination so he may go about his work.

The Court: Is there any objection?

Mr. Chance: No objection.

The Court: Very well.

Mr. Sheridan: Mr. Thompson, please?

HENRY THOMPSON,

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Henry Thompson.

Direct Examination

By Mr. Sheridan:

Q. Mr. Thompson, what is your residence address?

A. 201 East 68th Way, Long Beach.

Q. Mr. Thompson, what is your business or occupation?  
A. Boilermaker foreman. [144]

Q. How long have you been engaged in that occupation as a boilermaker or boilermaker foreman?

A. About ten or 11 years.

Q. Mr. Thompson, during the course of your employment during those 10 or 11 years, have you ever worked on a foreign construction project?  
A. Yes, sir.

(Testimony of Henry Thompson)

Q. Were you foreman of boilermakers at Nome, Alaska?      A. That is right.

Q. At the time you were at Nome, Alaska, Mr. Thompson, did you engage in the construction of vessels and tanks for oil field work?      A. That is right.

Q. What was your capacity at Nome, Alaska?

A. I was foreman there in charge of erection of these tanks we were building there for the Government, for the Army Air Corps.

Q. Now, Mr. Thompson, in the construction of these tanks will you tell in your own words to the court what methods or techniques you customarily used for putting the sections of tanks together?

Mr. Chance: Object to the question on the ground that it does not show what type of tanks or vessels the witness is about to testify about, and does not show that he has any familiarity with the conditions existing on Bahrein Island. [145]

The Court: I will let him testify. The objection will be overruled.

The Witness: Shall I answer the question?

Mr. Sheridan: Mr. Reporter, will you read the question?

The Witness: I believe I remember it.

Q. By Mr. Sheridan: Very well.

A. In the construction of this work that we was doing there we was putting—we was fitting welded plate work together and we used a crane to raise the plate into position and caught it in place and fitted it up for welding with key plates and wedges and dogs—key plates and wedges primarily was the tool we used to bring the sheets close enough to weld properly.

(Testimony of Henry Thompson)

Q. Mr. Thompson, during this construction at Nome, Alaska, did you ever use turnbuckles as a tool for bringing the sheets or plates together?

Mr. Chance: Same objection as the objection to the previous question.

The Court: Same ruling. Answer the question.

A. No, no, we did not. We did not use turnbuckles on them. You could, of course, but it wouldn't be—would not expedite the job to use them. Key plates and wedges is the customary tool to bring your welded work close enough to weld up to a proper spacing.

Q. Now, Mr. Thompson, were you later on the Canol [146] project? A. That is right.

Q. What was your capacity on the Canol project at White Horse? A. I was erection foreman.

Q. During the process of your work as erection foreman on the Canol project were you constructing towers or vessels for the refining of oil or the storage of oil?

A. Why, why, yes—not towers but vessels and tanks.

Q. Now, Mr. Thompson, in the construction of these towers or tanks what equipment would you use to bind the sections together or get them prepared for welding?

Mr. Chance: Same objection as the objection made to the second to the last preceding question.

The Court: Same ruling.

The Witness: We used key plates and wedges.

Q. By Mr. Sheridan: Did you use turnbuckles on the sections at all?

A. No, no. You would not use turnbuckles on them for the same reason that they would not be suitable for that type of work in my opinion.

(Testimony of Henry Thompson)

Q. Mr. Thompson, in your practice and in your work would you find using turnbuckles would be impracticable because they would bind? A. Yes, sir. [147]

Mr. Chance: Object to that question.

The Court: The question is leading but I think I shall let him answer.

The Witness: There are various reasons why I wouldn't use turnbuckles. If your work is hanging—your object is that you are trying to fit up plates that are hanging in a position that is not exactly—they do not exactly correspond to the base work that you are fitting to. Your turnbuckles would have to be adjusted rather delicately to draw them into place, and if they were not they would pull your work out of line rather than bring it into line, in my estimation, exactly where it should come. In trying to substitute or in substituting turnbuckles for key plates in any kind of plate work, fitting up any kind of plate work, my experience has been you do not gain anything by it. You lose time and just don't do as good work. You can't get the work up in as good shape and it takes longer.

Mr. Sheridan: That is all.

Cross-Examination

By Mr. Chance:

Q. You say you worked on tanks on the Nome, Alaska job? A. That is right.

Q. What type of tanks were they? Storage tanks? [148] A. That is right.

Q. What was the approximate diameter and height of those storage tanks?

A. The tanks that we had—they were 25—let me see, about 25 feet in height and approximately 100 feet in diameter. I believe that is right—that is approximate.

(Testimony of Henry Thompson)

Q. Five thousand barrel or ten thousand barrel capacity? A. No, about 25 thousand barrel storage.

Q. 25 thousand barrels? A. Yes.

Q. About 25 feet high and 100 feet in diameter?

A. Approximately. That is as near as I would remember. It would run about 25 thousand barrels.

Q. And when you assembled the sections of these storage tanks at Nome, Alaska, were the sections fabricated in one tubular section completely joined together as a section? A. Oh, no.

Q. You had a number of plates to make each section, did you? A. That is right.

Q. And you assembled or welded them together on the ground, is that correct?

A. You mean on the ground? You mean on this job site?

Q. Let me withdraw that. I mean to say you would have [149] plates that you welded together with other plates to make up the sides of the storage tank?

A. That is right.

Q. And what was the size of these plates, approximately?

A. They were approximately six by 28, I believe, by varying thicknesses from 5-8ths to 3-8ths.

Q. That is 6 feet by 28 feet by 5-8ths—that is, 6 feet long and 28 feet wide and 5-8ths in thickness?

A. Yes. Only I would say 6 feet wide and 28 feet long. You just reversed that.

Q. And you would take those plates 6 by 28, 5-8ths material, and you would join each plate to a preceding



(Testimony of Henry Thompson)

plate about the same size to make up the side of the storage tank, isn't that correct?

A. That is right; in a ring—in what we would call a ring, the first ring and so on as you went up.

Q. Now, what was the weight, approximately, of those plates 6 by 28 by 5-8ths would you say?

A. Well, let me see. You mean you want me to tell you just what it is?

Q. No, just give me your best judgment of what a plate 6 by 28 would weigh.

A. About 1,800 or 2,000 pounds.

Q. Around 1 ton approximately? [150]

A. Yes, just roughly. I could tell you closer than that but I don't remember.

Q. That is close enough. Now, how many of these plates 6 feet in height and 28 feet long—the storage tank when assembled was about 25 feet high and if that is so you would have four sections joined one to the other after you got them together?

A. That is right. I don't remember exactly. I have built a good many tanks and I don't remember exactly whether it was a five-ring tank or a six ring tank, or whether it came out even 23 feet or 26 feet. I don't know exactly.

Q. I don't want to pin you down. I want to get the approximate height of these things to compare them with what we have involved in this case. Now, did you do approximately the same type of storage tank assembly on the Canol project at White Horse, Canada?

A. Yes, approximately.

Q. You were assembling storage tanks only at White Horse on the Canol job?

A. Yes, that is right.

(Testimony of Henry Thompson)

Q. You did not work on either of those two projects, either the Nome, Alaska project or Canol project on these 150-foot bubble towers that would go into an oil refinery?

A. No; they didn't have any at Nome, and I didn't actually work on any of them. [151]

Q. You did not actually work on any of the bubble towers on the Canol project either, did you?

A. That is right.

Q. Would you say in your opinion it would be improper boilermaker practice in joining 20-ton sections, approximately 12 feet in diameter together with like sections that go to make up a 150-foot bubble tower of a catalytic cracking unit to use turnbuckles together with wedges, jacks and cranes in assembling those sections?

A. Well, in my experience—of course I can only give you my opinion of it. I would say it would be improper inasmuch as I think that the turnbuckles would not be the proper tool. You can use them, certainly, but in my experience in fitting up heavy plates, inch and inch and a quarter or inch and one-eighth plates in high pressure vessels, why, I have very seldom if ever seen them use turnbuckles to do it with.

Q. Have you seen them use turnbuckles together with key plates and wedges, jacks of various types, steam boat jacks or hydraulic jacks of various pressures or come-alongs together with a crane in the assembly of approximately 20-ton sections in a bubble tower assembly?

A. Well now, I will tell you in the States here and in most of the work, refinery work, those bubble towers are not assembled in a refinery. They are assembled in the shop and [152] that is a shop man's job.

(Testimony of Henry Thompson)

Q. Have you ever seen a bubble tower section assembled at the site of a project in the field?

A. On the Canol project only.

Q. You saw them doing it there although you did not work on it?      A. Yes; I was there.

Q. You did not work on the assembly of the bubble tower sections?

A. No, actually I did not have any authority over the assembly of it. I had men working on it that were under me but I loaned them to that department.

Q. But you did not work on it yourself?

A. No.

Q. On the bubble tower?      A. No.

Mr. Chance: No further questions.

#### Redirect Examination

By Mr. Sheridan:

Q. Mr. Thompson, you state that when you saw them assembling the bubble tower sections at the Canol project that—      A. Yes.

Q. Would you state to the court what method they used [153] in assembling the bubble tower sections at Canol?

A. Well, that is a pretty technical question.

Mr. Chance: The witness first testified—I will withdraw that.

The Witness: When they first started assembling them they were using various methods. As I say, it is a shop job where they have the proper tools to do it in the shop and nearly everyone that was connected around there was giving a little advice on the subject. Finally I believe they wound up with key plates and wedges.

(Testimony of Henry Thompson)

Mr. Chance: Would you say they did not use turn-buckles—I am sorry, pardon me.

The Witness: Shall I answer the question?

Mr. Sheridan: That is all. Answer the question.

The Witness: No, I would not say that they did not use them but I believe they did cease using them before the job was finished.

### Recross-Examination

By Mr. Chance:

Q. But they may have used them so far as you know on the Canol job? A. Part of the time, yes.

Q. You say it is a shop job to assemble nine or ten ton sections of a 150-foot bubble tower? [154]

A. Oh, yes.

Q. In the States?

A. If you just notice when you are driving around Los Angeles where a new refinery is being constructed you will see them haul in the bubble towers—100 or 90-ton vessels. Sometimes they might bring them in in halves but generally, I believe, and hardly without exception they are brought in complete.

Q. But on a foreign job where they have to ship the sections from this country to the Persian Gulf, for example, they do not assemble those altogether in the shop, do they? A. I think not, no.

Q. Were you ever on Bahrein Island? A. No.

Q. Were you ever in Arabia? A. No.

Mr. Chance: No further questions.

(Testimony of Henry Thompson)

Redirect Examination

By Mr. Sheridan:

Q. Mr. Thompson, I would like to ask you one question with the indulgence of counsel?

Mr. Chance: Certainly.

Q. By Mr. Sheridan: Mr. Thompson, do you know Mr. Doyle McDonald, the plaintiff in this case? [155]

A. That is right.

Q. Has Mr. McDonald ever worked for you?

A. Yes; he worked for me on the Canol project in Canada. He did various jobs but he wound up with a job as foreman of the construction of the structural work. He had charge of building the structural work for the tanks of a certain size.

Q. Were you the man immediately in charge of Mr. McDonald on the Canol project?

A. Yes; his operation was under me and he had to satisfy me to get along.

Q. Well, did you observe the workmanship of Mr. McDonald during the period he was on the project?

A. That is right.

Q. What kind of work did Mr. McDonald do?

Mr. Chance: Object to that as being incompetent, irrelevant and immaterial and not within the issues of this case.

The Court: He may answer.

The Witness: How was that now? You asked me what kind of work he did.

Q. By Mr. Sheridan: What was the degree of his workmanship? Was it good or bad or fair?

A. He was successful and did a very nice job on the work he did for me. [156]

(Testimony of Henry Thompson)

Q. You were satisfied with the work he did?

A. That is right.

Mr. Sheridan: That is all.

Recross-Examination

By Mr. Chance:

Q. Mr. Thompson, you know, do you not, that Mr. McDonald's last classification on the Callahan job at Canol, in the month of October, 1943, was the classification of a welder at \$1.75 an hour, do you not?

A. That is right.

Q. And you also know, do you not, that Mr. McDonald quit the employment on his nine months contract at Canol before the expiration of the nine months because he wished to return to the States and voluntarily resigned, do you know that?

A. That is right.

Mr. Chance: No further questions.

The Witness: Would you let me qualify—make a statement on that question?

Redirect Examination

By Mr. Sheridan:

Q. Mr. Thompson, I will qualify it. Was it or was it not true that you had a verbal contract with Bechtel-Price [157] and Callahan that when the welding job was finished that the welders would be able to leave the project?

Mr. Chance: If you know.

The Witness: Sir?

Mr. Chance: Do you know of any such agreement.

The Witness: There was some such an idea, yes—I don't know.

(Testimony of Henry Thompson)

Mr. Chance: I move to strike the witness' answer on the ground he has shown he does not know.

The Witness: There was one.

The Court: I do not think this is so highly material. The fact is, he quit because his work was unsatisfactory would be the only question that would be very material here.

The Witness: The one thing here that I wanted to state to the attorney was that when I said he was acting as foreman, he was acting as a junior boilermaker foreman which drew a rate the same as the welder, the high pressure welder on the job. That is the reason the \$1.75 was paid him. That was a combination rate in that case.

#### Recross-Examination

Q. By Mr. Chance: But the classification was that of a welder?

A. A junior boilermaker foreman on the job drew \$1.75.

Q. Was he actually welding?

A. When he was drawing this job, no. He was acting [158] as foreman or junior foreman or pusher we generally say, of this construction.

Q. Do you know that he was up on that job from about June 2nd, 1943 to the date of his departure on October 7, 1943, which was about two and a half months?

A. You say do I know that?

Q. Does that coincide with your knowledge of how long he was on the job? About two and a half months?

A. I don't remember. I thought it was, perhaps, longer than that, but I did not remember. There was a good many men coming and going and I would not say other than that.

(Testimony of Henry Thompson)

The Court: That would be about three and a half months, wouldn't it?

Mr. Chance: June 2nd to October 7th. Yes, that is right.

The Witness: That sounds more like it. I was thinking about three or four or five months or something like that.

Q. By Mr. Chance: Part of the time he was working as a welder on that job? A. Yes.

Mr. Chance: Nothing further.

Mr. Sheridan: May this witness be excused, your Honor?

The Court: Yes. Who is your next witness?

Mr. Chance: I would like to have Mr. McDonald back on [159] the stand for further cross examination.

The Court: Mr. McDonald, will you resume the stand?

DOYLE McDONALD,

called as a witness by and on behalf of the Plaintiff, having been previously duly sworn, was recalled and testified further as follows:

Cross-Examination

(Resumed)

By Mr. Chance:

Q. After you left Mr. Tam on the afternoon of July 9th, after you had this altercation with him, to which you referred in your previous testimony, you say you went over to wait for a ride in front of the field office. You went over there to get a ride to the camp at Awali?

A. That is right.



(Testimony of Doyle McDonald)

Q. And you say that while you were waiting out in front of the construction office, waiting for the ride to go to Awali, that Harold Vessels came out of the office or was out in front of the office and struck up a conversation with you?

A. Whether he came out or was out in front of the office I don't know, but we did strike up a conversation.

Q. And you say that Mr. McAuliffe then came out of the construction office a little while later, while you were [160] still waiting there with Vessels?

A. I believe Mr. McAuliffe was going in. I am not sure.

Q. The conversation with Mr. Vessels was interrupted then by Mr. McAuliffe coming up to where you two were standing, is that about it?

A. As I recall Mr. Vessels interrupted Mr. McAuliffe and stopped him.

Q. And then Mr. McAuliffe asked in effect, what was the trouble, and you told him that you had had an altercation or a dispute with Mr. Tam?

A. No. Mr. Vessels explained that there had been some trouble.

Q. He told McAuliffe there had been some trouble?

A. And he wanted me to explain it to Mr. McAuliffe.

Q. So you then told Mr. McAuliffe that you had had some trouble with Tam that afternoon on the job?

A. I explained the situation.

Q. Now, in your deposition given in May of this year in this case, at page 27, line 7, and following lines, you said that:

"It was approximately half an hour after I had to leave the job. All our rides were gone. I went over to the office

(Testimony of Doyle McDonald)

and waited for my ride, which is the usual place to wait. Mr. McAuliffe came by [161] at the time, and I told Mr. McAuliffe, I said, 'I have been fired over there,' and explained to him. I said, 'Seems as though I can't work for Tam. Have you got any other job? I'd just as soon work on another job.' 'Well,' he said, 'we are going to stop this transferring, put a stop to it.' And he said, 'We will see.' He said, 'You come back out in the morning and report to'—he was the consulting engineer. Walt knows his name. I can't recall it."

And then skipping a line:

"Harold Vessels was his name. That is the fellow I am speaking about."

Now, skipping over to page 28, line 2, you continued:

"He asked me to come back the next morning. Mr. McAuliffe said, 'You come back and see Mr. Vessels, and he will take care of it.' He asked me to come back the next morning."

Now, is that your testimony on May 19th of this year in this case?

Mr. Sheridan: Just a moment, counsel. I would like to have you complete that line.

Mr. Chance: I will come back to that. I will do so. There is the further sentence:

"I was waiting the next morning, waiting [162] to go ahead."

Is that your testimony as I have read it that you gave in your deposition on May 19th of this year?

A. If you have read it correctly that is my testimony.

Q. That is your testimony?

A. Evidently, if you read it correctly.

Q. That is your testimony? A. Yes, I suppose.

(Testimony of Doyle McDonald)

Q. So that your present recollection of the sequence of the persons with whom you talked differs now from what it was on May 19th of this year, is that correct?

A. No. I still stand by my testimony in the deposition.

Q. You do?

A. Yes. And the testimony I gave on the stand just now.

Q. You stand by both of them?

A. That is right. They both coincide.

Q. Now the next morning you say that you came back to the construction office from Awali—you came from Awali to the construction office at the refinery site the first thing in the morning, is that correct?

A. I returned from Awali to the field construction office waiting my future directions.

Q. And you did that the first thing in the morning of [163] July 10th, 1944?

A. It was the day I was requested to come back. To be sure on the 10th I don't know, but it was the day after the altercation.

Q. In other words, if the altercation was on the afternoon of July 9th, you came back the first thing on the morning of July 10th?

A. If the 10th was the day I returned, yes, so far as I know.

Q. If the 9th was the day of the altercation, then you would say that you came back on the morning of the 10th, is that correct?

A. That is right in that sense of the word.

Q. Now, who was the first person you met when you came back the following morning on July 10th we will assume is the date, who was the first person that you

(Testimony of Doyle McDonald)

saw and had a talk with in front of the construction field office—Ed Gratz, or did you first talk with Harold Vessels?

A. To be positive I couldn't say which one was first, to be truthful. It has been so long, but I believe I did talk to both of them.

Q. You did talk to both Gratz and Vessels that morning?

A. Yes, but not together.

Q. They were separate conversations?

A. That is right. [164]

Q. That is, when you talked to Gratz Vessels was not present?

A. Yes.

Q. And when you talked to Vessels Gratz was not present?

A. Something on that order.

Q. You don't recall whether you talked to Gratz first when you first got there or whether you talked to Vessels when you first got there, to the construction camp on the morning of July 10th?

A. Roughly speaking out of a clear sky, as a rough guess, I believe it was Harold Vessels I talked to first. I am not positive now.

Q. Your best recollection now is that you talked to Harold Vessels first?

A. As I can remember—I am not positive either way. As I explained—

Q. Your best recollection is that it was Vessels first?

A. I do remember talking to both of them.

Q. Your best recollection this morning is that you talked to Vessels first?

A. Roughly speaking. I am not positive.

Q. All right. Now, in your deposition given in this case on May 19th of this year, at page 28, line 11 and

(Testimony of Doyle McDonald)

following lines, you gave the following testimony, did you not? [165]

"I came back the next morning, and I was standing there and up came the superintendent of boilermakers.

"Q. What was his name?

"A. I only met him that one time. Gratz.

"Q. You refer to Ed Gratz?

"A. That is right. He said, 'I understand you had some trouble over there with Tam.' I said, 'There is nothing particularly wrong about that.' I said, 'A lot of fellows have had trouble with him.' 'Well,' he said, 'did you know I was superintendent here?' I said whether I knew it or not was immaterial to me at the present time. I said I was fired and going home. He said, 'Why did you go to the office, instead of me?' I said, 'I didn't particularly go to the office.' I said, 'I came over here to wait for a ride.' I said, 'Mr. McAuliffe and Mr. Vessels collared me, and they had heard I was going to work overtime and wondered why I wasn't there, and,' I said, 'I told them.' He said, 'You are supposed to report this stuff to me first.' I said, 'Well, forget about it.' I said, 'I am not here to argue. I am waiting for somebody else.' He said, 'Well, you are fired. You are through. You are finished.' He said, 'That is for sure.' He said, 'I am running [166] the business, and I am going to continue to run it.'"

Now, was that your testimony on May 19th of this year as best you recall?

A. I believe that is right as far as I can recall. On the position of the word "collared," that is a rough term used on construction consistently, even talking to a friend. You don't refer to it as a slam or slander against any particular person.

(Testimony of Doyle McDonald)

Mr. Chance: I move to strike the last two sentences of the witness' testimony as not responsive to the question.

The Court: The motion will be denied. I don't think it is material anyway. I am interested in one particular point. You say that Gratz said to you:

"Well, you are fired because you didn't come to me." or that in substance, and you said,

"It makes no difference to me, I am going to quit anyway."

Is that what you said?

The Witness: I believe I said I was going home, sir. I am not positive. The situation involved when you are fired, it is understood after all you are in a foreign country and you are strictly under the control, sir, of these companies. They are the law.

The Court: You do not need to go into those details. [167]

The Witness: But it meant you were going home.

The Court: Why did you report to the office the next morning?

The Witness: Mr. Vessels had asked me to come back.

The Court: Did you report there to go to work or to tell them you were going to quit?

The Witness: I reported down there, sir, to have Mr. Vessels tell me what my next step would be. He asked me to come back.

The Court: What was your intention?

The Witness: To go to work, sir. It was my intention to carry on with my contract. I wanted to do that very much.

(Testimony of Doyle McDonald)

The Court: That is all unless that suggests some questions, Mr. Chance.

Q. By Mr. Chance: Now in your deposition given in this case on May 19th of this year at page 29, commencing at line 12, you testified as follows, did you not?

"So Vessels came out and said, 'Mac, go on out there and go to work.' I said, 'Ed Gratz just fired me.' I said, 'On top of Tam, Gratz made it unanimous.' I said, 'I am fired, and I am going back to camp.' So I got a ride back to camp in the hospital car."

That was your testimony on May 19th, was it not?  
[168]

A. That was part of it.

Q. What I read just now from your deposition you testified to exactly on May 19th, did you not?

A. Yes, that portion of it.

Q. Now, when you went back to camp that morning of July 10th after Vessels had said, 'Mac, go out there and go to work,' and instead you went back to the camp at Awali, you have testified that Earl Paine, the office manager of the company, came to see you in your room at Awali?

A. That is right.

Q. What time of the day did Earl Paine come down to see you on that morning of July 10th?

A. It was the morning part of the day. To be right frank with you it could have been anywhere from 10 to 12 o'clock so far as I know.

Q. Sometime in the forenoon?

A. Yes, I believe so.

(Testimony of Doyle McDonald)

Q. Did it take you about an hour to get back to camp in the hospital car after you had had your talk with Vessels?

A. No. It only takes about 15 or 20 minutes at the most.

Q. Now in your deposition on May 19th of this year at page 29, beginning at line 15, you testified as follows, did you not?

"So I got a ride back to camp in the hospital [169] car. At the time they had changed employment managers, and Mr. Paine came down. I had been sick off and on for some time, and I had gone to bed. He woke me up, and he said, 'Will you sign these papers? You have been fired.' I said, 'I am sleeping right now. When do I get out of here?' He said, 'A couple of days.' I said, 'Put it off, I will come to the office and sign them, and I will go on to sleep. I would rather not be bothered now.' So he stood there and talked to me a while. 'Well,' he said, 'How do you want to sign, you are fired or discharged?' I said, 'It is very definite. You can't make anything else out of it but one thing. It is practically immaterial to me how I sign.'

"Q. Fired or discharged?

"A. Yes, or quit.

"Q. Or resigned, did he use that expression?

"A. No, he said quit, I believe. I said, 'You can only make one thing out of it.' He said, 'I will fix it up.' So I didn't sign anything particularly that I recall, whether it was fired or discharged or quit."

That was your testimony on May 19th in your deposition, was it not? [170]

A. I believe so, yes.



(Testimony of Doyle McDonald)

Q. You first joined the boilermakers' union for the first time, A. F. of L. Local 92 in September, 1941, in the classification of a burner, did you not?

Mr. Sheridan: Now, your honor, this type of thing is immaterial.

Mr. Chance: I submit, your Honor, if it was material to have Mr. Thompson testify to his version of the experience and qualifications of this witness that it is proper for me to show the background, the actual background from the record of this witness.

The Court: I think we are using more time than is necessary insofar as it may involve the major issues of this case—that is, as to whether he was discharged or voluntarily quit and as to whether there was cause for discharge. But he may state briefly his experience as a boilermaker and when he became identified with the union, but there is no use to spend a great deal of time on that.

Mr. Chance: I shall not spend a great deal of time. I will make an offer of proof if your Honor would prefer me to shorten it.

The Witness: I will shorten it.

The Court: You go ahead and tell us when you joined the union and what your experience as a boilermaker has been.

The Witness: In 1928 I joined Machinists' Local in [171] Washington, D. C., and was a specialist riveter for the Boeing Aircraft method of osmosis metal—

Mr. Chance: Just a moment. I would like to offer—

The Witness: I will tell you in just two minutes.

Mr. Chance: I would like to ask the questions, if I may.

The Court: Well, the court asked this question. I told him to go ahead and state his qualifications.

(Testimony of Doyle McDonald)

The Witness: Approximately two years later I went to the Friant Dam and was a member of the Machinists' Local there as a welder. I was a welding foreman a big portion of the time, approximately two years, sir.

The Court: That was when?

The Witness: From. I believe approximately the year of '39 and '40. At that time the war broke out and I came to the harbor to get in war work. I worked two years for Calship and my old foreman was down there and he suggested that I take up burning because I was so excellent at it and they needed good burners.

Mr. Chance: I move to strike that.

The Witness: That was my boilermaker's experience as a burner, sir.

The Court: Go ahead.

The Witness: Then I went to Corpus Christi on the Canol project as a burner. They asked for five of us fellows [172] and we went there. At that time I met Mr. Thompson. I came back to Calship and worked as a burner leadman all that time at Calship prior and after then. I left for the Canol project. I went up there as a blacksmith, which work I did as a structural foreman, layer-out, as a burner, as a welder.

I came back and I went to work at the United Concrete and Pipe for a short period of time and then I went to Bahrein Island in the Persian Gulf as a boilermaker. I came back and have been a rigger leadman at United Concrete and Pipe ever since, sir, and still am.

Q. By Mr. Chance: Now, the first time that you were in the classification of a boilermaker was for the three months, part of the three months that you were on

(Testimony of Doyle McDonald)

the Canol project, from June to October of 1943, isn't that correct?

A. There was no union up there involved.

The Court: Was that the first work you did as a boilermaker?

The Witness: As a boilermaker at Calship from June, 1941, I believe, until 1943 or June, 1942. I was there two years, from June to June.

Q. By Mr. Chance: You were a boilermaker at Calship? A. Boilermaker-burner.

Q. I will show you an application which you signed and a photostatic copy of an application for employment at [173] Bechtel-Price-Callahan, dated June 14, 1943, and ask you if that is your signature on that?

A. That is my signature.

Q. And on that—

Mr. Sheridan: Counsel, I would like to see that.

Mr. Chance: Yes.

Q. You show in this application that you were in the mining business for yourself from 1933 to 1938. Is that correct? A. Yes, to a certain extent.

Q. That is your own handwriting on there, is it not?

A. That is right.

Q. You show that from 1938 to June, 1938, you were with Boeing Aircraft as a welder at 85 cents an hour, is that correct? A. That is right.

Q. That is also in your own handwriting?

A. That is right.

Q. And you show that from June, 1939, to June, 1941, you were employed as a welder welding combination for Griffith Company. That was on the Friant Dam job you referred to? A. That is right.

(Testimony of Doyle McDonald)

Q. And you show that from June 1941 to June 1943 you were with Calship Building Corporation on Terminal Island [174] burning leadman, is that correct?

A. That is right.

Q. So the first time you actually worked in the classification of a boilermaker was on the Canol job between June and October of 1943, isn't that correct?

A. That is wrong. At Calship was my original work.

Q. I am asking you as a boilermaker and not as a burner.

A. No, that is wrong, you are wrong.

The Court: What is the difference between a burner and a boilermaker?

The Witness: Shall I explain that, sir?

The Court: Yes.

The Witness: The difference between a boilermaker—a boilermaker's local, which is more or less immaterial to me—

The Court: I don't care whether it is immaterial to you or not. Tell the court what the difference is.

The Witness: They have burners, they have welders, they have fitters, they have layout men. They have various specialist men out of their local and they are all termed boilermakers.

The Court: Do you belong to the boilermaker's union?

The Witness: Yes, and are termed as such and the same thing occurs.

The Court: What kind of work does a burner do? [175]

The Witness: Burning of flat plates, not round but flat plates with longitudinal lines of various thicknesses and various angles and various bevels.

(Testimony of Doyle McDonald)

The Court: That is sufficient. I just wanted to see whether there was any relationship at all between the two.

Mr. Chance: No further questions.

Redirect Examination

By Mr. Sheridan:

Q. Mr. McDonald, with regard to your conversation with Mr. Vessels which you reiterated in your deposition on page 29, line 12, you stated:

"So Vessels came out and said, 'Mac go on out there and go to work.' I said, 'Ed Gratz just fired me.' I said, 'On top of Tam, Gratz made it unanimous.' I said, 'I am fired and I am going to camp.'"

Is that your entire conversation that you had with Vessels at that time and place?

A. That is only a part of the conversation, I believe. As you go on and read somewhere in there—I believe I can tell you before you read it, that he said, "Well, that makes the difference," or something to that order. "It must be out of my hands." I believe that is part of the conversation.

Mr. Chance: If that is in the deposition I ask counsel [176] to point it out to the court.

Q. By Mr. Sheridan: It is your testimony at this time that further conversation took place, is it not, Mr. McDonald?

Mr. Chance: Just a moment. I object to that as not being proper redirect examination. It is leading and suggestive. I ask counsel if he can show in the deposition where that statement appears.

The Court: Is it your contention that he so testified in the deposition?

(Testimony of Doyle McDonald)

Mr. Sheridan: That is not my contention.

The Court: Was there any further conversation than that which has been read to you?

The Witness: Other than which I have explained? Mr. Vessels at the time explained to me, he said, "That makes it altogether different; it takes it out of my hands," in which he was more or less—

The Court: Well, we don't want your comment.

Q. By Mr. Sheridan: Just state what Mr. Vessels said when you told him that Gratz had fired you?

A. I believe that he said, "That makes it much different; it takes it out of my hands. I cannot do anything further about it," but he would try.

Q. By Mr. Sheridan: Well, to your knowledge was there any further attempt made to assign you to another job on [177] Bahrein Island?

A. There was no further attempts made that I know of.

Mr. Sheridan: That is all.

The Court: Anything further, Mr. Chance?

Mr. Chance: Nothing further at this time, your Honor.

Mr. Sheridan: Your Honor, we have a statement of account which was prepared by the Bechtel-McCone Corporation in its office in San Francisco which shows the status of accounts between Mr. McDonald and the Bechtel-McCone Company—that is, the Bechtel-McCone Constructora Corporation of South America, and counsel at this time wish to stipulate that this account is a correct account of Mr. McDonald and the South American Company, and we wish to introduce it in evidence as such.

Mr. Chance: I so stipulate.

(Testimony of Doyle McDonald)

The Court: On that stipulation it will be admitted in evidence.

(The document referred to was marked as Plaintiff's Exhibit No. 3, and was received in evidence.)

[PLAINTIFF'S EXHIBIT NO. 3]

DOYLE McDONALD  
STATEMENT OF ACCOUNT

Employed April 20th 1944.

Terminated July 10th 1944.

Bahrein Ex-Employee

Charges      Credits

Balance forward from statement

furnish employee Bahrein Island, 55

Rupees 7 Annas \$ 16 90

Travel Expense account 71 00

Bapco Club Account \$18 79

Cash withdrawn 7 62

Laundry & dry cleaning .76

Accommodation Expense Cairo 5 00

Transportation Expense Port Said 4 40

Embarkation & Incidental Exp. " " 6 81

Steamship Fare to U. S. A. 151 47

Cash advance U. S. against travel Ex-

penses 30 00

Egypt Entry visa 2 13

Salary withheld 7-1 to 7-10-44 127 16

\$226 98      215 06

215 06

Balance Due Compania-Constructora \$11 92\*

\*Above balance does not include ATC plane fare from Jolisite to Cairo. If we are billed by the A.T.C. for this fare there will be an additional charge of \$169.44.

(Plaintiff's Exhibit No. 3)

[Endorsed]: No. 4549-O'C. McDonald vs. Bechtel-McCone. Plfs. Exhibit No. 3. Filed Oct. 2, 1945. Edmund L. Smith, Clerk; by MEW, Deputy Clerk.

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Mr. Chance: May I have permission to substitute a copy for this one? This is the only one that I have.

The Court: If there is no objection you may.

Mr. Sheridan: I do not desire a copy of it. I will stipulate it may be withdrawn.

The Court: You mean a substitute copy for the record? [178]

Mr. Chance: Yes, your Honor.

Mr. Sheridan: The plaintiff rests at this time, your Honor.

The Court: You may proceed, Mr. Chance.

Mr. Chance: Mr. McAuliffe, will you take the stand, please?

J. ROY McAULIFFE,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: J. Roy McAuliffe.

Direct Examination

By Mr. Chance:

Q. What is your residence address, Mr. McAuliffe?

A. 165 St. Lucia Avenue, Alameda Park, California.

Q. What is your occupation?

A. I am project manager for, at the present time, Bechtel-McCone Corporation.



(Testimony of J. Roy McAuliffe)

Q. And who is your—strike that. Who was your employer immediately preceding your present employment?

A. Constructora Bechtel-McCone, South America.

Q. What was your position with that company? [179]

A. I was project manager at the work on Bahrein Island.

Q. How long were you employed in that position?

A. I was on the island from February, 1944 to the end of July, 1945.

Q. What was the nature of the construction work at Bahrein Island during the time you were project manager?

A. I went over there for the sole purpose of constructing the aviation gasoline project.

Q. And that was done for an oil company?

A. Yes, the Bahrein Petroleum Company, Limited.

Q. While you were there was the major part of the construction work of the gasoline refinery facilities undertaken and completed?

A. They were completed and accepted.

Q. And did you complete your contract with that construction company?      A. Yes, sir.

Q. How long have you been engaged in the construction of oil refinery, chemical and like plants?

A. Well, I started with Stone and Webster when I was discharged from the last war. That would be in 1919. Prior to that time I had been mostly in municipal and highway and railroad work.

Q. Stone and Webster are construction engineers of [180] chemical plants and refinery plants?

A. Yes, sir. They are nationally known engineers and contractors.

(Testimony of J. Roy McAuliffe)

Q. And have you since been continuously engaged in the same line of work?      A. Practically so.

Q. Who was immediately under you on—strike that. As project manager were you in complete charge of construction work on Bahrein Island for the South American Company?      A. I was.

Q. And who was immediately under you?

A. I had three men directly under me. One was my assistant, and I had two general superintendents.

Q. Who were they?

A. The assistant was Harold Vessels, and the general superintendents were Walt Hillman and Frank Regan.

Q. What was the position of Harold Vessels?

A. Harold Vessels was my assistant. He was mostly in administrative work on the project. He took care of any details I couldn't look after.

Q. Assistant project manager?

A. Yes, that was his title.

Q. And under the two general superintendents what was the next order in the organization on the island?  
[181]

A. Directly under the general superintendents were the general foreman in charge of their several crafts such as carpenters, boilermakers, iron workers, riggers, and so forth.

Q. You had a number of general foremen?

A. Yes.

Q. Each in charge of the work on a particular department?

A. Each one in charge of his own department or craft.

(Testimony of J. Roy McAuliffe)

Q. And you had a general boilermaker foreman in charge of the boilermaker department? A. I did.

Q. What was his name? A. Ed Gratz.

Q. Now, under the general boilermaker foreman what was the next order in the organization?

A. There would be foremen. We had several. At that time there were probably three, maybe three or four foremen.

Q. Three or four boilermaker foremen?

A. Yes.

Q. And then there were foremen in other departments such as carpenters and so on?

A. On each division we had a foreman under the general foreman of that craft. [182]

Q. And was Leon Tam one of the three or four boilermaker foremen under Ed Gratz? A. He was.

Q. During the year 1944?

A. He was, entirely throughout the project.

Q. You knew Leon Tam, did you?

A. Very well.

Q. And did Leon Tam have boilermakers under his supervision? A. Yes, he did.

Q. Approximately how many would you say?

A. Well, that fluctuated. Our maximum boiler-maker crew on the job was probably 90 men and Tam had all the, practically all the column and vessel work. I couldn't tell you exactly. He may have had up to at one time or another 30 or 40 men under his direction.

Q. Thirty or forty boilermakers?

A. Boilermakers, yes.

(Testimony of J. Roy McAuliffe)

Q. And did each boilermaker have a crew of Arab day laborers assigned to him?

A. Yes. The ratio on the whole project ran about 1 to 4 and a half. It depended on exactly what work they were doing as to how many Arabs they had.

Q. How many, approximately, would each boilermaker have of Arabs under him? [183]

A. That varied because tank work—they might have 15 or 20 or 25, but on vessel work it was probably down anywhere from 3 to 5.

Q. And what were the duties of these Arab native day laborers under a boilermaker?

A. They did all the manual work such as handling materials and fetching and carrying handling tools to the boilermakers. They did everything except the actual mechanical work. They were not mechanics. In other words, they were helpers and laborers.

Q. What authority, if any, did the boilermakers foreman have during the year 1944, particularly in July, 1944, with respect to discharging boilermakers working under that particular foreman?

A. No foreman had any authority to discharge. He had the authority to take the man off of a job and send him to the general foreman with his recommendations.

Q. And then the general foreman, what authority did he have in that regard?

A. The general foreman had authority to discharge subject to—in all cases on the job discharge was subject to my written approval. I might say that I approved any discharge the general foreman recommended.

(Testimony of J. Roy McAuliffe)

Q. Did Leon Tam have any authority to discharge boilermakers working under him in July of 1944? [184]

A. He did not.

Mr. Sheridan: I did not hear the last statement of the witness in answer to the prior question.

Mr. Chance: Will you read the answer, Mr. Reporter?  
(Answer read.)

Q. Are you familiar in general with the process of assembling approximately 20-ton sections of a bubble tower that were used during the year 1944 on Bahrein Island on this construction job?

A. Yes, I am.

Q. You observed the method that was employed?

A. Yes.

Q. Will you describe the method that was used in the assembly of the several sections of the towers, approximately 150 feet high and 12 feet in diameter and generally referred to as a bubble tower or towers of like size and weight and height?

A. Yes. This particular tower happened to be the heaviest one we had on the project. It was the heaviest lift and we handled it a little different than the small ones. First off, we prepared a cradle to set the sections on. The sections were delivered in the immediate area adjacent to where they were going to be assembled, which was some 300 feet from where the tower was going to be erected and it was assembled in a line pointing directly to the foundation upon [185] which it was going to be set.

The sills were carefully prepared at a given elevation so they were all level, and then these cribs were built up. First, by heavy sections set on it and lined up so the continuity will take care of the foundation right through.

(Testimony of J. Roy McAuliffe)

Then the next step after they got the one section set is to progressively pick up another section and lift it with the crane and set it on the crib and line it up, tack it and weld it to the section already in place and that follows progressively from the first section until the column is completed.

On that particular column we used, I forget which crane, one of the heavier cranes, and the section would be swung over to a point fairly close—I will say within 12 or 18 inches to the piece already in place, and then turnbuckles were used to pull the column up, that section of the column up closely adjacent to the other one. In order to space it they used welded plates on at various places around it so it will come up and butt it. Then the crane was released and the turnbuckles were released and then the welders went to work fitting up the sections. They had to work around the circumference to bring it adjacent. They had to bring the sections into alignment and that final drawing up was accomplished by key plates. Those are plates that are tacked to the shell and a bar is driven in by a wedge and that is [186] brought exactly to the point they want it. Of course a column that height has to be closely lined up or it will be out of plumb and is carefully worked out. The fitting is the largest job and then the welding was carefully fitted and correctly fitted in the welding process.

Q. The job of the boilermaker was, then, to bring the new section into juxtaposition with the sections already assembled?

A. That is right.

Q. And fit up the ends of the new section so that they were true with the section to be joined and to bring

(Testimony of J. Roy McAuliffe)

the sections as close as necessary for the purpose of welding, is that correct?                   A. That is correct.

Q. And then there were welders who picked up the job from there and completed the assembly by welding the two sections together?

A. That is correct. We had skilled welders for that purpose.

Q. Did you observe whether or not turnbuckles were used by boilermakers on the assembly of the bubble tower, this large bubble tower to which you have referred, in the construction of the refinery on Bahrein Island?

A. On that particular column I could not say right now whether I observed them or not. That was our custom. I [187] would say that we did, but it would be hearsay, because right at this minute I could not say actually I visualized and saw the turnbuckles, although I did climb around the column and noticed the key plates.

Q. Would you say from your observation of the assembly of towers of the character of this bubble tower that McDonald worked on and that Tam supervised on Bahrein Island, that it was customary to use turnbuckles in conjunction with key plates and other tools in assembling the sections?                   A. It was.

Q. You observed that as the customary practice on Bahrein Island during the year 1944?

A. That is right.

Q. Did you know Doyle McDonald?

A. I knew him just on the job. I did not know him previously.

Q. That was the first time you met him?

A. Yes. Well, the first vivid recollection I have of meeting him was the day he came to me at the office in

(Testimony of J. Roy McAuliffe)

front of the construction office. I may have met him before that and don't remember it.

Q. Have you heretofore fixed the date in your mind as to when you have this vivid recollection of meeting him when he came to the office?

A. To the best of my memory it was sometime in July, [188] 1944.

The Court: You evidently met him when the contract of employment was signed on May 28th.

The Witness: Not necessarily, Judge, because men signed the contract in one room and I signed it in the other room.

The Court: Your signature is attached to this contract?

The Witness: Yes, that is my signature.

Q. By Mr. Chance: Maybe you would sign a number of contracts in one day when the men arrived, is that right?

A. That is right.

Q. But you would not necessarily meet the man when he arrived?

A. No. I endeavored to meet the men when they arrived, not at the signing of the contract, but when they were processed. They were usually processed down in the mess hall. I don't remember the date we started that. I tried to make it a point if I were free to go down and meet the men and become acquainted with them before they ever went to work, but in this particular case I don't remember whether I met Mr. McDonald or not prior to the time he came to the office.

Q. Now, do you remember the circumstances of this meeting with Mr. McDonald in July of 1944?

A. Yes.



(Testimony of J. Roy McAuliffe)

Q. State what they were, please. [189]

A. Mr. McDonald came to me at the construction office and informed me or requested to be transferred and I asked him why. He said he could not get along with his foreman.

Q. Did he mention who his foreman was?

A. Yes, Tam, Leon Tam.

Q. What did you say?

A. I told him that just on the spur of the moment I would not give him an answer; that our policy was strongly objecting to transferring men around because we have no authority on the job and we wouldn't get our work done. We were over there to do a certain job and a certain foreman would be assigned to certain work and the men were assigned to the foremen, and in order to have an organization they would have to work that way, but I would not give him a yes or no answer. I would investigate the circumstances. So I told him I would check it up and asked him to come back the next day.

Q. Was anybody else present at this conversation besides yourself and Mr. McDonald, to your recollection?

A. Not to my recollection. I don't remember.

Q. You don't remember whether anyone else was present or not?

A. No, sir, I don't

Q. What time of the day would you say that occurred? [190] Have you any recollection of the time?

A. No, I couldn't say that.

Q. Did you make an investigation after you had this discussion with Mr. McDonald, the first one?

A. I definitely did.

Q. And did you make inquiry of anyone?

A. Yes. I spoke to both Mr. Tam and Ed Gratz.

(Testimony of J. Roy McAuliffe)

Q. Following your inquiries of Tam and Gratz, did you issue any instructions or give Mr. McDonald any reply?

A. I issued instructions that McDonald go back to work.

Q. When did you do that?

A. To the best of my memory, the following morning.

Q. Did you do that personally or did you do that through someone else?

A. That I could not answer. I may have done it through Vessels, although I thought that I did it myself. My best recollection is that I did it personally. I said it personally to McDonald, but that is quite a while ago and I had so many men. I might have passed it on to one of my assistants as well as telling him myself.

Q. Did Mr. McDonald go back to work pursuant to the instructions you issued?      A. He did not.

Q. What did he do to your knowledge? [191]

A. To my knowledge he walked off the job.

Q. Did you sign any letter in relation to the occurrence that you have just related—that is, the termination of Mr. McDonald's employment at or about that time?

A. I probably did. I signed most of the termination notices.

Mr. Chance: I show counsel a letterhead of the *Compania Constructora*, Bechtel-McCone, South America, being a copy—counsel states he has the original of this letter.

Q. I will ask you if that document, if the original, was signed by you on or about the date it bears?

A. I could not say positively unless I saw the original. It might have been signed with my signature by my assistant.

(Testimony of J. Roy McAuliffe)

Q. I will show you this. Is that your signature?

A. Yes, that is my signature.

Q. Did you cause this to be delivered to Mr. McDonald about the date that it bears? A. That is right.

Mr. Chance: We will offer in evidence as defendants' next in order, the photostatic copy of this letter dated July 10, 1944, with the statement that the original, which counsel for the plaintiff has handed me, bears the signature of J. Roy McAuliffe on the line above the typewritten signature. That is the only difference between the photo- [192] static copy that I am introducing.

Mr. Sheridan: I would prefer you introduced the original.

Mr. Chance: Then I will withdraw the offer and offer to put the original in evidence.

The Court: On the stipulation just made it will be admitted in evidence.

(The document referred to was marked as Defendants' Exhibit B, and was received in evidence.)

[DEFENDANTS' EXHIBIT B]

COMPANIA CONSTRUCTORA  
BECHTEL-McCONE-PARSONS, S. A.

Awali, Bahrein Island, Persian Gulf  
July 10, 1944

Doyle McDonald  
Awali  
Bahrein Island

Dear Sir:

Reference is made to your resignation from the Service of the Company, effective C. O. B. July 10, 1944.

(Defendants' Exhibit B)

It is anticipated that air transportation will be available for you to leave Bahrein for Cairo in the very near future and you should make yourself ready to depart on that basis. You will be allowed to take with you fifty-five pounds of baggage. If you have additional luggage, please prepare a list of contents in duplicate showing estimated values and address to which shipment should be made, and leave this list at the Personnel Department. This baggage will be forwarded to you by first available boat and at your own risk and expense.

Upon your arrival in Cairo, please get in touch with Mr. Joseph X. Causley, Shepheard's Hotel, who will make available to you if desired, transportation to the United States. Please note that in accordance with Clause XII (b) of your Employment Agreement, all cost of such transportation arrangements made on your behalf is at your expense. Also, all hotel, living and any and all other expenses incurred by you enroute from Bahrein Island to the United States are your responsibility.

You will be carried on the payroll at Bahrein up to and including July 10, 1944.

Yours very truly,

J. Roy McAuliffe

J. ROY McAULIFFE,

Project Manager

JRMcA:d

cc: V. G. Hindmarsh

J. X. Causley

File

[Endorsed]: No. 4549-O'C. McDonald vs. Bechtel-McCone. Defts. Exhibit B. Filed Oct. 2, 1945. Edmund L. Smith, Clerk; by MEW, Deputy Clerk.

(Testimony of J. Roy McAuliffe)

Mr. Chance: I would like to call the court's attention to several sentences of this letter dated July 10th. In the first sentence reference is made, "to your resignation from the service of the company, effective C. O. B. July 10, 1944," and then the instructions with respect to his departure and his travel home and then the next to the last sentence I call particular attention to: "Also, all hotel, living and any other expenses incurred by you en route from Bahrein Island to the United States are your responsibility." And I am referring the court there to Clause 12-b of the employment agreement.

Q. Did you know what, if any, instructions had been issued by Leon Tam to Mr. McDonald the afternoon before you had your conversation with McDonald concerning his termination? [193]

A. Yes; because I talked to Tam to find out what the trouble was.

Q. And you knew then that it was an instruction to get turnbuckles to be used for the assembly of a section of this bubble tower that McDonald was working on?

A. I knew about that much. I did not know all the details. I knew that Tam had issued instructions to McDonald to get the tools for the work and that they had had words and then McDonald told me when he came to me he would not work for Tam, he could not get along with him and wanted a transfer.

Q. Did you in your opinion, with your experience, was it a reasonable instruction on that afternoon preceding your conversation with McDonald for Tam, the foreman, to have ordered or instructed McDonald to procure turnbuckles to be used on the assembly of that section? A. It was entirely reasonable.

(Testimony of J. Roy McAuliffe)

Q. Was Mr. Tam a satisfactory and competent boiler-maker foreman in his work during his employment on Bahrein Island during the years 1944 and 1945 while under your supervision?

A. Mr. Tam was a highly skilled boilermaker foreman. He had a very excellent record and made a very fine showing on the job. He had charge of it right up to the completion of the work. It was [194] very important work and he was entirely satisfactory. Prior to his work there, to my knowledge, he had had a very fine record with the Standard Oil Company both in the field and in the shop. His work has always been boilermaker work and he has been foreman for many years.

Mr. Chance: No further questions.

Cross-Examination.

By Mr. Sheridan:

Q. Mr. McAuliffe, did you know Doyle McDonald during the time he was employed at Bahrein Island?

A. Yes

Q. Were you in position to know the character of work that Mr. McDonald did?

A. Yes. I was out and saw the work he was working on.

Q. What was the quality of the work that he was doing?

A. That I can't say except that he was told to go to work so he must have been satisfactory enough that he was getting along with his work.

Q. Well, did you see the work that he was doing?

A. I saw it, but I didn't observe it as to quality. I saw the work going on all over the project.

(Testimony of J. Roy McAuliffe)

Q. Did you in your supervisorial capacity ever hear objections made to the quality of work that Mr. McDonald did? [195]

A. Except at the time McDonald came and explained about working for Tam.

Q. That argument wasn't over the quality of Mr. McDonald's work, was it?

A. That point came up because when I spoke to Tam about this man being transferred, Tam at that time told me that in his opinion McDonald's work was not very satisfactory; that he would continue to work him but he didn't consider him a first-class mechanic by any means.

Q. But this opinion was expressed by Tam the day after this heated altercation, was it not?

A. Either the day after or the same day. The day I spoke to Tam I spoke to him.

Mr. Sheridan: I want to introduce this as the plaintiff's exhibit next in order, which is an order issued by the Compania Constructora to Captain C. P. Judy of the Air Transport Command in substance stating:

"The services of the above named have been terminated by this company and we request air transportation to get him outside. J. Roy McAuliffe."

Also offer the plaintiff's exhibit next in order what is denominated "Air Transport Command Priority Identification Certificate," signed by J. Roy McAuliffe, and countersigned by Doyle McDonald on the 10th of July, 1944. [196]

The Clerk: Plaintiff's Exhibits 4 and 5.

Mr. Chance: I stipulate they may be introduced and received.

(The documents referred to were marked as Plaintiff's Exhibits 4 and 5, and were received in evidence.)

[PLAINTIFF'S EXHIBIT NO. 4]

COMPANIA CONSTRUCTORA .  
BECHTEL-McCONE-PARSONS, S. A.

Awali, Bahrein Island, Persian Gulf  
July 10, 1944

Captain C. P. Judy

Commander

A. T. C., Bahrein Island

Subject: Doyle McDonald

Dear Sir:

The services of the above-named have been terminated with this Company, an organization which is engaged in direct connection with the war effort. It is of decided advantage to the project to secure air transportation from Bahrein to Cairo for the above individual in order to eliminate the long delay which is being experienced in securing transportation by sea from Bahrein Island. Your approval is requested.

Yours very truly,

J. Roy McAuliffe

J. ROY McAULIFFE,

Project Manager

JRMcA:d

[Endorsed]: No. 4549-O'C. McDonald vs. Bechtel-McCone. Plfs. Exhibit No. 4. Filed Oct. 2, 1945. Edmund L. Smith, Clerk; by MEW, Deputy Clerk.



[PLAINTIFF'S EXHIBIT NO. 5]

RELEASE

Bahrein Island

Persian Gulf

(Place)

July 10, 1944

(Date)

Know all Men by These Presents: Whereas I  
Doyle McDonald am about to take a flight or flights as  
(Full-Name)

a passenger in certain Army Aircraft on or about July  
(Date or Dates)

11, 1944 and whereas I am doing so entirely upon my own  
initiative, risk and responsibility; now, therefore, in con-  
sideration of the permission extended to me by the United  
States through its officers, and agents to take said flight  
or flights, I do hereby, for myself, my heirs, executors,  
and administrators, remise, release, and forever dis-  
charge the Government of the United States and all of  
its officers and agents, acting officially or otherwise, from  
any and all claims, demands, actions or causes of action,  
on account of my death or on account of any injury to  
me which may occur by reasons of the said flight or  
flights.

The term "flight or flights" as used herein is under-  
stood and agreed to include the preparation for, continua-  
tion, and completion of flight or flights whether or not  
one or more than one aircraft is used throughout the  
entire flight or flights, as well as all ground and flight  
operations incident thereto. It is further understood and  
agreed that this release, among other things, extends to

(Plaintiff's Exhibit No. 5)

and includes negligence, faulty pilotage, and structural failure of the aircraft thereof.

The execution hereof does not operate to waive any statutory right conferred by act of Congress.

Doyle McDonald  
(Signature)

Jas. R. Davis  
(Witness)

-----  
(Witness)

In Case of Emergency Notify

E. Outheir  
(Name)

1235 Cedar Apt. E2  
(Address)  
Long Beach Calif.

ATC-PT-42

AIR TRANSPORT COMMAND  
PRIORITY IDENTIFICATION CERTIFICATE

Date July 10, 1944

Part I. Certification of Sponsoring Agency

Authority is hereby requested for Doyle McDonald  
(Print name here)

Boilermaker to travel on Air Transport Command air-  
(Grade or title)

craft from Bahrein Island to Cairo, Egypte via Abadan  
on or about July 11, 1944.

Permanent address 1235 Cedar Apt. E-2, Long Beach,  
California

Local address Awali, Bahrein Island, Persian Gulf  
Phone .....

Employer and/or Government Department or Agency  
sponsoring the travel C. C. Bechtel-McCone-Parsons,

(Plaintiff's Exhibit No. 5)

S. A. Reasons for travel To avoid difficulties in securing boat transportation from Bahrein Island

Latest time of arrival at destination to successfully complete mission .....

I hereby certify that the movement of this passenger is necessary and essential to the successful prosecution of the war, and that the mission of this passenger is of such urgency that air transportation is necessary.

C. C. BECHTEL-McCONE-  
PARSONS, S. A.

(Govt. Dept. or Agency)

J. Roy McAuliffe

J. ROY McAULIFFE

(Signature)

Project Manager

(Rank or Title)

Part II. Passenger Signature: I certify that it has been brought to my attention that failure to appear for transportation after definite space has been assigned will automatically forfeit priority for travel.

Doyle McDonald Boilermaker .....

(Passenger signature) (Rank or Title) (Organization)

Doyle McDonald

Part III. Priority Approval

Priority Authorized Channel

Identification No.....Baggage Weight.....Number.....

Philip C. Morse Jr.

(Signature of Priorities & Traffic Off.)

Sta #15

11 July 1944

Capt A C

(Station)

(Date)

(Rank, Grade or Title)

[Endorsed]: No. 4549-O'C. McDonald vs. Bechtel-McCone. Plfs. Exhibit No. 5. Filed Oct. 2, 1945. Edmund L. Smith, Clerk; by MEW, Deputy Clerk.

(Testimony of J. Roy McAuliffe)

Q. By Mr. Sheridan: Now, Mr. McAuliffe, on what date did this altercation between Mr Tam and Mr. McDonald take place?

The Court: I think it is agreed it was July 9th. The evidence is uncontradicted that that was the date.

Q. By Mr. Sheridan: If the argument between Mr. Tam and Mr. McDonald took place on July 9th upon what date did you confer with Mr. McDonald in regard to this altercation?

A. Well, I testified that it was the following day after he came to me.

Q. Did he come to you on the date of July 9th, the date of the altercation?

A. Yes. He came to my office to the best of my knowledge.

Q. It is your testimony that the next day, or July 10th, you investigated this matter with Mr. Gratz and Mr. Tam?

A. I would not say July 9th or 10th. It was the day following his coming to me that I gave a decision. Whether [197] that was the 8th, 9th or 10th, I could not tell you.

The Court: Your letter is dated July 10th.

The Witness: That would be after the man resigned when that letter was written.

Mr. Sheridan: I move to strike that last answer, whether it was a resignation or not.

The Court: I suggested the letter because it might tend to refresh your memory.

The Witness: It would not be written until after he had left. I might add that every man that leaves the island leaves with a letter of termination—either a letter

(Testimony of J. Roy McAuliffe)

of resignation or discharge or completed contract, and no man leaves the island without one of those three letters and a letter is never written until such time as an employee is terminated. You might write an expiration of contract ahead of time, but resignations or discharges would be impossible to write ahead of time.

Q. By Mr. Sheridan: Now, Mr. McAuliffe, isn't it a fact that the conversation you had with Mr. Gratz and Mr. Tam took place the day after the altercation?

A. To the best of my knowledge either the same day or the following day. One or the other.

Q. Wasn't it your testimony that you had this conversation with Tam or Gratz the day following the altercation?

A. No. I said I gave my answer the day following the [198] altercation.

Q. And what was your answer that you gave the day following the altercation?

A. That Mr. McDonald could not be transferred; he would have to go back to work under the foreman to which he was assigned.

Q. Did you personally tell Mr. McDonald that he was to go back to work or did you send him written notification of that?

A. I didn't send him written notification. I testified that I either told him personally or gave the instruction through one of my subordinates. ,

Q. What subordinate would that be?

A. Either Vessels, Hillman or Regan. Those would be the most likely three.

(Testimony of J. Roy McAuliffe)

Q. Now, Mr. McAuliffe, what hours did the coolies on the job work?

A. Well, the normal hours—they worked the same as the staff men.

Q. If they went to work at 4 o'clock in the morning they worked from 4 o'clock in the morning until two?

A. They either worked straight time or overtime, depending on the staff men.

Q. Did the coolies work any overtime at all?

A. Oh, yes, a great deal. [199]

Q. Isn't it a fact it was the policy of the company not to work the coolies overtime?

A. No. We worked the coolies—I think our records will show we worked them up to 25 percent overtime.

Q. Wasn't it a fact that—

A. I might say it was hard to work them overtime because they didn't want to work. They didn't want to work normal time even.

Q. Wasn't it a fact that it was the policy of the company not to work overtime because it inflated the Arabian currency?

A. No. If there was any policy at all it was because they couldn't get the work out of them.

Q. You couldn't get work out of them straight time?

A. We had to work them because they were the only helpers we could get.

Q. It was impossible to get much work out of them at any time?

A. It was difficult.

Q. Now, Mr. McAuliffe, calling your attention to—we have stipulated this is a drawing of a vessel comparable to the one which we are speaking about. This particular vessel we are concerned with in this particular

(Testimony of J. Roy McAuliffe)

case was one which did not have the top on it as yet, did-it?

A. Because in this construction we are starting from [200] the bottom of this tank and building toward the top.

Q. And that which appears to be the top of the tower was not yet assembled during the time involved in this action?

A. I don't remember exactly but oftentimes we do not put the skirt on—that is the section it fits on at the bottom until—

Q. Well, your recollection is that the operation that was being performed at that time was the joining of the various 20 foot sections of the tower together, was it not?

A. That is right.

Q. And it wasn't a matter of finishing up the tower or anything like that. They were trying to get the tower together and then they would complete the ends and then erect the tower, isn't that true?

A. That could be, yes.

Q. Now, Mr. McAuliffe, you stated you were out on this job and you watched the construction of this tower, isn't that true?

A. Yes. I passed by it, oh, maybe several times a day because we were short of men at that time. That was one of our major columns and naturally we were anxious to get it assembled and erected.

Q. On this particular tower do you have any independent recollection as to what the position of the cribbing under [201] the tower was? Was that cribbing

(Testimony of J. Roy McAuliffe)

laid underneath the tower laterally or was the cribbing laid in a longitudinal direction?

A. Well, the cradle itself, of course, would be laid transversely. I couldn't answer that question.

Mr. Chance: For the witness' information you might tell him that we have agreed with Mr. Tam that the drawing is not precise as to the cribbing.

The Witness: I don't doubt that. That is an artist's sketch.

Q. By Mr. Sheridan: Your testimony is the cradle would be substantially as this is represented here?

A. It depends on whether the vessel is partly rolled or snubbed in the cradle. I don't remember, but you would have a transverse bearing across this way in any event.

Q. But the matter of the cribbing was that the cribbing went in a longitudinal direction and the cradle in a lateral direction, isn't that true?

A. Normally that is the way it is done.

Q. But the cribbing itself was in a longitudinal direction from the front to the end?

A. I could not swear to that, but I would think that is the way it was. Normally these vessels are rolled. This one was too large to do much rolling. They turn them to weld them but this vessel was too large to roll in the customary manner. I do not remember the exact details of the [202] cribbing. I might say I did not go into the detail of construction when I was out there. It was more policy matters.

Q. Your job was establishing policy and administration?

A. Yes; I administered the organization and the function of the project as a whole rather than any details.



(Testimony of J. Roy McAuliffe)

Q. But your job certainly wasn't a hammer and tongs job? A. That is right.

Q. You were handling the personnel and getting the whole job done?

A. I was responsible for the entire job—not any detail.

Q. Mr. McAuliffe, were you ever present when one of these sections of the bubble tower was swung into shape and the preliminary job of tightening it up was done?

A. I don't believe I was. I have passed there when they were ready to take sections but I don't remember actually being at the site of the column when they set a section and completed the operation. I have seen it at various stages of the operation. I have seen it on the ground and laid in place or brought up together and fitted up and the key plates, but I never stood there long enough to watch the operations go through.

Q. Have you ever been there at the preliminary point [203] when the sections were just being brought together?

A. That is the point I just tried to make. I don't believe that I recollect now that I actually was there at that time.

Q. Did you ever formulate or issue any company policy that in the joining of sections a particular device should be used?

A. No. That would not be my function to do that unless they were doing it wrong that I knew of.

Q. If it was erroneously being done you would issue an order, would you not? A. That is right.

Q. For the efficiency of the job?

A. If it came to my attention.

(Testimony of J. Roy McAuliffe)

Q. But you had the power if there was a stupid procedure being utilized to change it, did you not?

A. Oh, certainly.

Q. But as far as you know you had never issued any orders for the use of turnbuckles or any particular type of device in joining these tower sections together?

A. It wasn't necessary for me to do that because that is the regular procedure of the boilermaker foremen.

Q. Have you ever seen key plates used?

A. Oh, yes. Used key plates not only on that vessel but many others and on the construction of the large regenera- [204] tors for the cracker is all key plate construction.

Q. Is it necessary for key plates to be used in order to perform the job?

A. For the final setup the key plates are essential. You cannot get along without them.

Q. Is it possible to bring up the final assembly of a vessel like this with turnbuckles?

A. If you are lucky and just happen to hit it right, but oftentimes the sections do not match exactly and it is so hard to get them to match. If you don't have a perfectly square cut at the end you will have one side of your vessel maybe opened up more than the other and you have to make a perfect alignment and you go around on these key plates and keep wedging in your pins until you get that just exactly right.

Q. With the key plates you can do that?

A. That is the final adjustment.

Q. With the turnbuckles it would be more or less—

A. Turnbuckles are not used for that purpose, if that is what you are driving at. The turnbuckles are just to bring it up there approximately in place and then take

(Testimony of J. Roy McAuliffe)

over with key plates. The turnbuckles are used primarily to speed the job up so you don't have to keep a crane standing there waiting all the time. You do that to release the crane and everything else. [205]

Q. Now, Mr. McAuliffe, do you have any idea or any opinion as to how long it would take to put on the ears and lugs and apply a one-inch turnbuckle to each side of the vessel and to tighten it up so that the 20-ton portion of the vessel would be attached to the rigid portion of the vessel in order to complete the job and allow the Walkathon Crane to be released?

A. That is not much of a job if you have the material there.

Q. How long would it take to do it?

A. Oh, I would say anywhere from 20 minutes to three-quarters of an hour.

Q. And in that 20 minutes or three quarters of an hour you would be required to tack on the ears and lugs and things?

A. That is assuming that you have got your crane there and everything and your sling and you just go ahead and tack your lugs on and put the turnbuckles on and pull them up and release your crane.

Q. It would take 25 minutes to three quarters of an hour if you had the material there and ready to go?

A. I said 20 minutes to 45 minutes. You understand I am speaking roughly. I am not a mechanic. I am just talking in generalities.

Q. That would require that everything be in place, the [206] crane, the cradle already rigged?

A. That is right.

Q. And the sling would be rigged, would it not?

A. Well, very likely if you had the crane there.

(Testimony of J. Roy McAuliffe)

Q. Wouldn't it take even more time than that to rig the sling?

A. Takes a very little time to put a sling on there. It is just a case of running it around and hooking it.

Q. You had to put blocks under it to protect the sides of the vessel?

A. I don't know whether they used one sling or two slings. It depends on the shell. There is danger of crushing the vessel if it is of light construction.

Q. This is a 20-ton section, isn't it? A. Yes.

Q. And that is a 50-ton Walkathon Crane, is it?

A. It is not a Walkathon if it is a 50-ton crane. It would be a Manitowak.

Q. A 50-ton crane?

A. Yes, the Manitowak is a 50-ton crane. It is the damage to the vessel I am speaking about, crushing it with your slings.

Q. But there is not much danger of crushing a vessel made of 1 and 1-8th steel? A. No. [207]

Q. Mr. McAuliffe, were you ever on the bubble tower at the time that McDonald was working on it?

A. Why, I probably was, although I don't remember seeing McDonald actually on that spot.

Q. You didn't know him well enough to have your attention called to him?

A. No, not until he came to see me.

Q. Do you know if any other boilermakers worked on building the bubble tower prior to McDonald leaving Bahrein Island?

A. Naturally there were other boilermakers working on it.

Q. Do you know of your own knowledge that there were others? A. Yes, I employed them.

(Testimony of J. Roy McAuliffe)

Q. Who were assigned to the bubble tower and doing the job of fitting it up?

A. Well, now, you are asking me a question whether anybody actually did McDonald's particular job there?

Q. That is right—that is what I am directing my questions to.

Mr. Chance: Object to the question as being unintelligible.

Mr. Sheridan: There is nothing unintelligible about that. [208]

The Court: Do you mean worked at the same kind of work before McDonald came and after he left?

The Witness: That is true, yes, indeed, we completed the work.

Q. By Mr. Sheridan: Do you know the names of any of those boilermakers.

A. Not offhand.

Q. Would you recognize them if I mentioned them?

A. I might or might not.

Q. Would you recognize the name of William Christianson?

A. No.

Q. Mr. McAuliffe, how long would it take, assuming that your materials were there and the job was ready to go, to apply your turnbuckles to the vessels, to the rigid side and the non-rigid side and take up your bars and draw the turnbuckles up to the point that the job would be ready for the key plates to be applied and the crane to be released?

A. I just testified from 15 to 25 minutes or three quarters of an hour to the best of my memory. I cannot tell you anything closer than that.

(Testimony of J. Roy McAuliffe)

Q. After applying the turnbuckles and tightening them up?

A. That is right. You asked about tacking them on and putting the turnbuckles on and pulling them up. [209]

Q. Now, Mr. McAuliffe, with regard to the altercation between Mr. McDonald and Mr. Tam, when did you first acquire any knowledge that there was an altercation between these two gentlemen?

Mr. Chance: Object to that as having been asked and answered.

The Court: I think it is repetitious. In addition to that, it has been agreed here that it was on the afternoon of July 9th. You may ask him if he saw him on that day or the next day.

Q. By Mr. Sheridan: Did you see Mr. McDonald on the day of the altercation or the following day?

A. Providing he came to me right after the altercation, as I understand the facts to be, he came to my office.

Q. When he came to your office was Mr. Vessels present? A. I don't remember.

Q. Do you ever recall Mr. Vessels being present and Mr. McDonald and yourself were conducting—had a conversation?

A. Yes, I do, but I do not remember the exact circumstances. Vessels and I were together a great deal. Being my assistant, we went around together a lot.

Q. Isn't it a fact the conversation you had with Mr. McDonald took place outside of your office? [210]

A. It could have.

Q. While Mr. McDonald was waiting for a bus to go back to Awali? A. It could have been.

(Testimony of J. Roy McAuliffe)

Q. But it isn't your positive testimony that the interview took place in your office?

A. No. At the office probably is what I should have said—inside or outside, but it was definitely at the construction office. I often talk to the men outside.

Q. And it is your recollection that Mr. Vessels was there sometime during your conversation?

A. Sometime during this period of altercation, or, rather, the discussion between McDonald and myself on this work. I would not say. As I testified, I don't remember him being there at any particular time.

Q. Then did you assign any part of the investigation of this matter to Mr. Vessels?

A. Not the investigation, no.

Q. You did that yourself?

A. I did that myself, yes.

Q. And with whom did you investigate?

A. Both the general foreman, Gratz, and McDonald's immediate foreman, Tam.

Q. Did you speak to Mr. Tam or Mr. Gratz first?

A. I don't remember. Probably spoke to Mr. Gratz [211] first because he was Tam's superintendent.

Q. At the time you spoke to Mr. Gratz did he have any knowledge of the altercation?

A. I don't remember.

Q. Did either Mr. Gratz or Mr. Tam recommend to you that Mr. McDonald be discharged?

A. No, they did not.

Q. Did you ask them what their recommendation would be in that regard?

A. No. I just asked them whether or not they were willing to transfer him. What I really—what I wanted to find out was the circumstances and to find out whether

(Testimony of J. Roy McAuliffe)

there was any justification for McDonald being transferred and naturally that brought out a discussion with them and neither one of them were favorable to a transfer and I wasn't either.

Q. Well now, Mr. McAuliffe, if either Mr. Tam or Mr. Gratz were dissatisfied with the quality of work that Mr. McDonald was doing or with his ability to get along with either of them as a supervising man on the job, wouldn't it be perfectly reasonable to assume that they would be glad to have him assigned to another job?

A. No.

Mr. Chance: Object to the question as being hypothetical.

The Court: He has already answered the question.

The Witness: No, it isn't true. That is not a true statement. [212]

Q. By Mr. Sheridan: What would be the truth in that respect?

A. The truth is the fact we had so much difficulty and expense in bringing a man from San Francisco or some place in the United States to Bahrein Island that we made every effort to work him when we had him there and there was no reason at all for us to wish to get him off the job unless he actually was creating disturbance and demoralizing the job in some way.

Q. If that is a fact, what objection did you have personally to transferring Mr. McDonald to another job?

A. Because it is very bad for an organization if all the men decide they want a transfer. The foreman wouldn't have any discipline at all in their work. They wouldn't have their orders obeyed and the work would be disorganized.



(Testimony of J. Roy McAuliffe)

Q. That is the basis of the policy on which you refused to transfer Mr. McDonald?

A. Unless there was a good reason for the transfer and I decided there was not.

Q. You saw no reason why he should be transferred?

A. That is right.

Q. And did you see any reason why he should be discharged?                   A. No.

Q. Now is it your testimony, Mr. McAuliffe, that you [213] verbally stated to Mr. McDonald that he was to return to work?

A. My testimony was I either stated it directly to Mr. McDonald or I issued instructions that Mr. McDonald was to be so instructed. I cannot testify truthfully whether I said it to McDonald or whether I told it to Vessels.

Q. But you don't know as a positive fact that you ever told McDonald himself?                   A. Personally; no.

Q. That he was to stay on the job?

A. I know definitely I issued the instruction but I cannot say I told him personally to do it.

Q. Would this instruction have been issued the day of the altercation?                   A. Very likely.

Q. Now, Mr. McAuliffe, isn't it a fact that on the 10th day of July, 1944, you were in Mr. Paine's office at the time that the termination of Mr. McDonald's services were being completed by the signature of the various papers and you came over to Mr. McDonald and shook hands with him and said, "I am sorry that I personally could not work this thing out."

A. No, I certainly did not. I would not say that. I did not see McDonald. I don't remember seeing him,

(Testimony of J. Roy McAuliffe)

but if I did I might have said, "I am sorry" all right, but I would [214] have said, "I am sorry you did not see fit to go back to work" or something like that, because I definitely did not have any knowledge of McDonald being discharged and to the best of my knowledge he just walked off of the job after being instructed to go back to work.

Q. That is just to the best of your knowledge?

A. Personally, as far as I am concerned, that is the way it was. I was the Project Manager and I issued those instructions and McDonald left the job and as much as anyone can be positive about anything that was the circumstances. Now, he did not come to me and tell me anything at all to the contrary, to my instructions, that somebody discharged him.

Q. Did you ever confer with Mr. Ed Gratz and ask him if he had ever stated to Mr. McDonald, "You are fired, you are through?"

A. No.

Q. "And that is for sure?"

A. No, it wasn't necessary. I went to Gratz first and investigated the case and then I issued instructions for the man to go back to work.

Q. But you did not ask Mr. Gratz if he had ever fired Mr. McDonald?

A. I beg your pardon. I think I probably asked it since that time but not at that time.

Q. Not at that time? [215]

A. No.

Q. At the time you investigated the case you did not ask him that?

A. I don't remember asking him that at all.

Q. Mr. Gratz had power to hire and fire?

A. He couldn't discharge without my signature.

Q. But he had the power to hire and fire?

A. Not to hire but discharge.

(Testimony of J. Roy McAuliffe)

Q. You did not ask him whether he fired Mr. McDonald or anything else, did you?

A. You have asked me a question and I don't remember.

Mr. Sheridan: That is all.

The Court: I want to ask you a question or two, Mr. McAuliffe. In your letter you say, "Reference is made to your resignation from the service of the company effective C.O.B. July 10, 1944."

Upon what did you base that statement?

A. On the fact that he walked off and evidently told the boys at the office.

But you had no written communication from him?

A. No.

Q. Nor personal communication from him directly?

A. Personally I don't think so. I don't remember McDonald coming back to me personally after he left the job. We may have spoken but I don't remember the circumstances if [216] we did.

The Court: Just what power did these foremen have, Tam and Gratz, with reference to employees?

The Witness: Well, Tam was a foreman and could turn the man into his general foreman, his superior. In other words, if the man was not satisfactory and could not do the work satisfactorily he would send him to the general foreman.

The Court: Could he advise them that as far as he was concerned and as far as they were members of a crew that they were discharged?

The Witness: Well, he could subject to the approval of the general foreman. In other words, if he reported to the general foreman he could recommend to the general foreman that the man should be discharged, and if the

(Testimony of J. Roy McAuliffe)

general foreman thought it should be that way he would approve it.

The Court: That is, Tam would make that recommendation to Gratz in this case?

The Witness: That is right.

The Court: That McDonald be discharged?

The Witness: That is right.

The Court: And then if Gratz took the position that McDonald should be discharged and notified McDonald to that effect—

The Witness: Then Gratz would notify me in the office.

The Court: And would you countermand his order? [217]

The Witness: Oh, yes. I could, but very seldom do, naturally. for organizational purposes, but all general foremen had very positive instructions from me, seeing that the job was so isolated, to be careful about handling men. We gave a man every consideration possible before resorting to a discharge. There was many reasons for that. The economics of the thing. It is a very costly matter to bring a man that far, take him half way around the world to get him over there and—

The Court: The court appreciates that situation, but, and counsel can check the court on this, my notes show that Mr. Tam testified yesterday that he was threatened by McDonald in this altercation and then McDonald said he was going to quit and he said, "Well, you are fired."

Now, what I am trying to get at is did Tam have the authority to tell him he was fired?

The Witness: No, he was just talking.

(Testimony of J. Roy McAuliffe)

Mr. Chance: May I call your Honor's attention to the fact—I believe what the witness Tam said was, "You are not going to work for me anymore." I don't think he said, "You are fired." My recollection of his testimony and in his deposition is that is the way he put it—"you are not going to work for me anymore."

The Court: You mean in Mr. Tam's deposition? [218]

Mr. Chance: Yes.

The Court: I made the note as he was testifying. There is not a very great difference, however.

Mr. Chance: The difference would be he wasn't going to work for him.

The Court: What I am trying to find out is whether he could do that—whether it meant anything.

The Witness: No, it did not. He was just talking. No foreman had the authority to discharge.

The Court: Did he have authority to say he would not work for him anymore and make that effective?

The Witness: Not unless the general foreman approved it.

Mr. Sheridan: But as a matter of practice wouldn't the general foreman approve it?

The Witness: Most likely he would, the same as I would approve the recommendation of the general foreman.

Mr. Sherman: To expedite the work and keep a happy working situation he would approve it?

The Witness: That would depend. I said in this case it would disorganize the work by transferring men. That is probably the same reasoning that Gratz used. If his men under his direction which, as I say, aggregated some 80 or 90 men toward the peak of the work, all decided they

(Testimony of J. Roy McAuliffe)

didn't want to work for their particular foreman he would not have any [219] organization at all.

The Court: Well, did you decline to transfer McDonald?

The Witness: I definitely declined to transfer him.

The Court: Did he request a transfer?

The Witness: Yes, he requested a transfer.

The Court: That is all the questions the court has.

Mr. Chance: No further questions.

Mr. Sheridan: Nothing further.

The Court: Inasmuch as we took no recess this morning we will adjourn at this time until two o'clock.

(Whereupon, at 11:45 o'clock a.m., a recess was had until two o'clock p.m. of the same day.) [220]

Los Angeles, California, Tuesday, October 2, 1945.

2:00 p.m.

The Court: You may proceed with the trial, gentlemen.

Mr. Sheridan: Your Honor, on the question of damages it is stipulated between counsel that there is a report prepared by the accountancy offices of Bechtel-McCone Corporation stating what the average cost was for moving men across the country from Los Angeles to New York would be for their first-class trainfare and then the trainfare from New York to Newport News, which was the point of embarkation, and also the cost of meals, tips, taxi fares and other incidentals for the five-day normal period of transcontinental travel which totals \$187.86. And it would be stipulated that that would be the normal fare that would be required in this particular case.

(Testimony of J. Roy McAuliffe)

Mr. Chance: That of course is subject to—I stipulate to those figures but they are subject, of course, to our objection that they are incompetent, irrelevant and immaterial on the overall ground of our defense.

The Court: Yes.

Mr. Sheridan: They are only introduced in case the subject of damages would become material. Of course that is understood.

The Court: I understand that.

Mr. Sheridan: It is further stipulated, your Honor, [221] between counsel that the earnings of Mr. Doyle McDonald are as they are presented according to a schedule which I submitted to the office of counsel for the defendants earlier in the process of this litigation. The schedule which is here appended is current up to the 13th day of May, 1945.

It is further stipulated by counsel for the plaintiff that this statement may be made up to date by taking the oral testimony of Mr. McDonald as to his earnings between the date of May 13th and the present date in order to determine what the measure of earnings would be by Mr. McDonald.

Mr. Chance: I so stipulate subject to the objection that it is incompetent, irrelevant and immaterial and on the general grounds and also on the particular ground that the earnings of the plaintiff subsequent to his termination of employment contract are entirely immaterial as to the proper measure of damages in the event your Honor gets to that point in the case, since the contract was terminable on 30 days' notice under Articles 9 and 12.

(Testimony of J. Roy McAuliffe)

I will be glad to argue the point, but subject to that objection I stipulate to these figures. We may be able to agree on the additional figures of his compensation subsequent to the date of May 13, 1944, as shown in this last exhibit.

Mr. Sheridan: I have stipulated already, counsel, we can take his oral testimony as to what those earnings would [222] be.

Mr. Chance: We might be able to shorten the hearing by getting together on that.

The Clerk: Plaintiff's Exhibits 6 and 7.

(The documents referred to were marked as Plaintiff's exhibits 6 and 7, and were received in evidence.)

[PLAINTIFF'S EXHIBIT NO. 6]

Normal first class train fare and lower berth

Pullman, New York to Los Angeles.....	\$144.81
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Train fare from Newport News to New York....	10.55
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\$155.36

Meals, tips, taxis and incidentals—5 days at

normal contract allowance of \$6.50 per day....	\$ 32.50
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\$187.86

[Endorsed]: No. 4549-O'C. McDonald vs. Bechtel-McCone. Plfs. Exhibit No. 6. Filed Oct. 2, 1945. Edmund L. Smith, Clerk; by MEW, Deputy Clerk.



## [PLAINTIFF'S EXHIBIT NO. 7]

Summary of Doyle McDonald's earnings when employed by Star House Movers, Inc., Long Beach, California:

From October 1 to October 15, 1944	\$129.74
October 16 to October 31, 1944	181.94
November 1 to November 15, 1944	180.40
November 16 to November 30, 1944	165.71
December 1 to December 15, 1944	184.12
December 16 to December 31, 1944	160.33
January 1 to January 15, 1945	185.62
January 16 to January 31, 1945	123.11
February 1 to February 15, 1945	162.80
February 16 to February 28, 1945	153.75
March 1 to March 15, 1945	155.62
March 16 to March 31, 1945	199.04
April 1 to April 15, 1945	40.62

From April 22 to April 28, 1945, Doyle McDonald earned \$90.00 from the D & S Construction Company.

Commencing about May 6, 1945, Doyle McDonald was employed by United Concrete Pipe Corporation, Steel Shipbuilding Division, on which date he received a check for \$21.30.

May 13, 1945, he received from said employer \$82.84.

This is a summation of his earnings from October 1, 1944, to May 13, 1945.

[Endorsed]: No. 4549-O'C. McDonald vs. Bechtel-McCone. Plfs. Exhibit No. 7. Filed Oct. 2, 1945. Edmund L. Smith, Clerk; by MEW, Deputy Clerk.

Mr. Chance: Shall I proceed with the defense, your Honor?

The Court: Yes.

Mr. Chance: Mr. Paine, will you take the stand?

## EARL PAINE,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Earl Paine.

## Direct Examination.

By Mr. Chance:

Q. Mr. Paine, by whom are you presently employed?

A. Army Air Forces, Western District, as Regional Supervising Auditor.

Q. For how long a period of time have you been so [223] employed?

A. Since the first of the year.

Q. Were you formerly, in the year 1944, employed by the defendant company, Compania Constructora Bechtel-McCone, South America?

A. Yes, sir.

Q. For what period of time were you so employed?

A. From March through October.

Q. Of 1944?

A. 1944.

Q. And were you on Bahrein Island during the period of March to October, 1944?

A. April to September.

Q. From April to September, 1944, you were on Bahrein Island?

A. That is right.

Q. And in what capacity did you serve that company during that period of time on Bahrein Island?

A. I was hired as office manager but acted as administrative manager.

Q. While you were on the island were you familiar with the plaintiff, Doyle McDonald?

A. I was.

(Testimony of Earl Paine)

Q. When did you first become acquainted with him, if you recall? [224]

A. My first contact with him was when I was called by the administrative manager to go see Mr. McDonald relative to why he did not appear on the job.

Q. About what date would be your best recollection that that occurred?

A. Well, I would hesitate to say because we had so many men that we were processing and terminating who were both coming and going from the job.

Q. I show you Plaintiff's Exhibit 5 in evidence in this case, and ask you if you have seen that document heretofore?

A. Yes.

Q. You are familiar with that document?

A. Yes, I am.

Q. Now, the date thereon is July 10, 1944. Would that assist you in determining approximately when you had your conversation with Mr. McDonald that you have referred to?

A. Yes. I would say that it was after the 4th of July—approximately around the 6th or 8th, along in there.

Q. Might have been later?

A. It could have been a day or two later. Could have been any time prior to that date.

Q. Any time between July 4th and July 10th, 1944?

A. That is right.

Q. Now, did you have occasion to prepare or assist [225] in the preparation of the material that is filed on this Plaintiff's Exhibit 5 at or about the date it bears?

A. That is right. That was the form for securing priority by the Air Transport Command to get civilian employees off the island and to Cairo, Egypt.

(Testimony of Earl Paine)

Q. In other words, you had to have one of these forms to secure such priority?

A. We had to process those through Air Transport Command before they would issue a ticket. They didn't issue tickets. It was merely a transportation right.

Q. The Air Transport Command was operating airplanes between Bahrein Island and Cairo, is that right?

A. That is right.

Q. Do you recall referring to the date of somewhere between July 4th and July 10th? Will you state the circumstances under which you had this conversation with Mr. McDonald?

A. I was called by the Project Manager, Roy McAuliffe, to go and call upon Mr. McDonald and find out why he didn't report for work, and this I did. I called on Mr. McDonald and asked him what the trouble was and he stated that he had had trouble with Mr. Tam, who was one of the superintendents on the job, and he would not work for him. And in our discussion when I mentioned to him, "Am I to assume that you are quitting if you don't report to work? I can't put much [226] other bearing on the matter," and as I recall—I believe I woke him up. He was rather sleepy and I think he was perhaps a little—a little befogged, you might say, from sleep, and I asked him to come to the office and prepare his Air Transport Command papers for transportation from the island.

We discussed something of his trouble with Mr. Tam and I told him that as far as I was concerned I had nothing to do with either hiring or firing anyone nor did I have any power over the men on the job whatsoever; that my position there was to expedite men to and from the island and to keep them there if it could possibly be

(Testimony of Earl Paine)

done. In the case of where a man had trouble with his family or something in camp away from a job, then it was within my power to assist them or straighten them out or terminate them if it should be required, but I referred him back to the job, either to Mr. Tam or Mr. McAuliffe, because as far as I was concerned my only business in calling on him was to ask him to go to work and then if he felt that he didn't want to work then it would be necessary for him to come up and terminate either voluntarily or by request.

That was followed by his coming to the office and processing out.

Q. By "processing out" you mean signing papers?

A. Preparing the papers. [227]

Q. For airplane transportation?

A. That is right.

Q. And did he sign this Plaintiff's Exhibit 5 at the time he came to the office for processing out?

A. That is right.

Q. I show you a signature, "Doyle McDonald" on the reverse side.

A. That is right.

Q. On the reverse side of this priority identification certificate, Plaintiff's Exhibit 5?

A. That is right.

Q. Is that the only document that you requested him to sign?

A. I do not recall if he had a foot locker and was going to ship the foot locker home. If so, he would have been required to sign that he would stand the transportation cost of the shipment of the foot locker home.

(Testimony of Earl Paine)

Q. That is his personal baggage?

A. His personal baggage. In many cases that was done. In this particular case I do not recall.

Q. I show you Defendants' Exhibit B in evidence, which is a letter addressed to Doyle McDonald, dated July 10, 1944, on Compania Constructora Bechtel-McCone, South America stationery, signed by J. Roy McAuliffe. Did you cause this document to be prepared on or about the date that it bears? [228]

A. That is right.

Q. And is that the form employed at that time by the company which you used in administering your duties where there was a resignation from service?

A. Yes, voluntary termination.

Q. Was there another type of form used by you in your duties when there was a discharge case involved?

A. Yes, it was very much this same form with the exception it stated that he was discharged from service and usually stated the reason why.

Q. After you had had your conversation with Mr. McDonald about this date or whenever it was you had this conversation with him, you prepared or caused these two documents, Plaintiff's Exhibit 5 and Defendants' Exhibit B, to be prepared?

A. Yes.

Q. In his deposition given on May 19th of this year in this action, Doyle McDonald testified as follows, and I read from this deposition. I am reading from page 29, line 16. He is relating—he has heretofore referred to a conversation with Mr. Gratz, one with Mr. Vessels, and one

(Testimony of Earl Paine)

with Mr. McAuliffe, and we fixed the date as July 10, 1944. I read:

"At the time they had changed employment managers, and Mr. Paine came down. I had been sick [229] off and on for some time, and I had gone to bed. He woke me up, and he said, 'Will you sign these papers you have been fired.' I said, 'I am sleeping right now. When do I get out of here?' He said, 'A couple of days.' I said, 'Put it off, I will come to the office and sign them, and I will go on to sleep. I would rather not be bothered now.' So he stood there and talked to me a while. 'Well,' he said, 'How do you want to sign, you are fired or discharged?' I said, 'It is very definite. You can't make anything else out of it but one thing. It is practically immaterial to me how I sign.'"

Then the question was asked:

"Fired or discharged?

"A. Yes, or quit.

"Q. Or resigned, did he use that expression?

"A. No, he said quit, I believe. I said, 'You can make only one thing out of it.' He said, I will fix it up.' So I didn't sign anything particularly that I recall, whether it was fired or discharged or quit."

Now, I want to ask you whether in the conversation referred to with Mr. McDonald down at his room at the camp on or about this date of July 10th, you woke him up and said to him, "Will you sign these papers? You have been fired?" Did you say that to him? [230]

A. No. I am afraid I would not start out that way with a man and wake him up that way.

Q. Your answer is you did not state that?

A. No, I did not.

(Testimony of Earl Paine)

Q. Did he say to you, "I am sleeping right now. When do I get out of here?" Do you recall?

A. I think that was sometime later in the conversation.

Q. He may have said that at some time?

A. He may have said it later in the conversation.

Q. Did you say, "A couple of days" meaning that he would get out of there in a couple of days, do you recall?

A. I don't recall having stated just those words, but it would have been approximately that time under any circumstances.

Q. You might have said that particular thing?

A. True.

Q. Did he then say to you, "Put it off; I will come to the office and sign them and I will go on to sleep. I would rather not be bothered now?"

A. That is right.

Q. He said that?                      A. Yes.

Q. Did you stand there and talk to him for a while and say, "Well, how do you want to sign? You are fired or discharged?" Did you say that? [231]

A. No.

Q. Did he say to you, "It is very definite; you cannot make anything else out of it but one thing. It is practically immaterial to me how I sign."?

A. Yes.

Q. He said that?                      A. Yes.

Q. You recall him saying that?

A. That is right.

Mr. Chance: No further questions.



Cross-Examination.

By Mr. Sheridan:

Q. Mr. Paine, in regard to Mr. McDonald did you have any conversation with Mr. Vessels?

A. Yes, I did.

Q. Would you tell the Court what your conversation regarding Mr. McDonald was with Mr. Vessels?

A. Well, after talking to Mr. McDonald I got a hold of Mr. Vessels and asked him what sort of a man Mr. McDonald was on the job; if he should make any effort to keep him from quitting the job, which was customary under all circumstances of that sort, and he stated that he was an excellent man, a very good workman and that it was possible they wanted to keep him on the job but he said his trouble was with Mr. Tam [232] and he didn't know whether he could straighten that out or not. In any event if he went back to work he would have to report to his regular superintendent, who was Mr. Tam.

Q. He would have to report to Tam in any event?

A. That is right.

Q. As far as Mr. Vessels was concerned?

A. That is right.

Q. Mr. Paine, in the course of your duties you were handling personnel, were you not?

A. That is right.

Q. And it was your function to try to make conditions as happy for the men and the company as possible, was it not?

A. Yes, sir.

Q. In your duties did you talk to Mr. Gratz in regard to Mr. McDonald?

A. No, I didn't. I had a second conversation with Mr. Vessels relative to Mr. Gratz.

(Testimony of Earl Paine)

Q. What was that conversation?

A. And the conversation was that Gratz would probably like to hire him if Tam would release him.

Q. Mr. Vessels knew that Mr. Gratz would like to have Mr. McDonald if Tam would release him?

A. That is my understanding.

Q. But you had no conversation with Mr. Gratz himself?      A. No. [233]

Q. Did you have any conversation with Mr. Tam in regard to Mr. McDonald?      A. No.

Q. Mr. Paine, in using these types of forms, plaintiff's Exhibit 5, and Defendants' Exhibit B, it was customary for you to use these forms in all terminations which occurred on Bahrein Island?

A. Just this form here.

Q. You are pointing to the Air Transport Command form?      A. That is right.

Q. Which requested transportation from Captain Judy, asking him to furnish transportation from Bahrein Island to Cairo by air?      A. That is right.

Q. Now, with reference to Defendants' Exhibit B, your statement is that there were various types of forms used?      A. That is right.

Q. Now, under what circumstances was the form used which compares to Exhibit B?

A. We had a form similar to this with the exception that in this case, as stated here—"Resignation," the other was in case of termination by the company or a medical termination.

Q. In case of termination by the company you are [234] referring to termination for cause, are you not?

A. That is right, and also medical.

(Testimony of Earl Paine)

Q. In case of termination for cause or in case of a medical termination then you would set out the reasons underneath the request, would you?

A. That is right.

Q. As a matter of practice? A. Yes.

Q. But in the form of Defendants' Exhibit B you state that—"There is a reference to your resignation from the service of the company, effective" such and such a date and there is no reason for the resignation set out, is there?

A. Not on this form. There was a separate letter for that.

Q. Now, did Mr. McDonald request you to use either the resignation form or the cause form? A. No.

Q. As he stated, it was immaterial to him which form was used, is that true?

A. Yes, I believe that is correct.

Q. Mr. Paine, were you instructed at any time by Mr. McAuliffe to see that Mr. McDonald returned to the job?

A. Why, that was my original reason for going to see Mr. McDonald. I was called by Mr. McAuliffe to find out why he wasn't reporting for work. [235]

Q. But had Mr. McAuliffe authorized you to state to Mr. McDonald "Go back to work"?

A. Well, that was customary. That was within my—one of my duties was to get the men back on the job if it was possible.

Q. In performing this particular duty of getting McDonald back to work was it your function to see that he

(Testimony of Earl Paine)

went back to work for Mr. Tam or did you have any other instructions?

A. No. He was just to report to the job. Whoever his superintendent was it was normal for him to have reported to him. That would be normal procedure, but I probably would not have mentioned any names except to tell him to go back to work.

Q. At the time that you were told to see that Mr. McDonald went back to work did you have any knowledge of an altercation between Mr. Tam and Mr. McDonald?

A. Yes. Mr. McAuliffe mentioned there was some trouble between them when he called me and naturally as long as that was trouble on the job I could not become involved in it other than to try to get him back to the job and get it straightened out.

Q. But your authority was to ask McDonald to go back to work for Tam alone?

A. To report back to the job. [236]

Q. But Mr. McAuliffe had not given you any authorization to send him to another job or transfer him to any other job than the one he was on?

A. That wasn't customary at all.

Mr. Sheridan: No further questions.

Mr. Chance: Nothing further. May this witness be excused, your Honor?

The Court: Yes.

Mr. Chance: Your Honor, we would next desire to put into the record the stipulation for the taking of the deposition of Edward Gratz on written interrogatories, signed by counsel for plaintiff and defendants and the direct interrogatories to be administered to the witness together with the cross interrogatories and the answers thereto, taken in Pittsburgh, Pennsylvania, and I would like to read them into the record. Perhaps your Honor would desire to follow the original. I will read the copy. I have furnished counsel with a copy and will read from the copy. Perhaps if Mr. Deegan would go up on the witness stand and read the answers it would expedite the matter in that way.

The Court: Yes.

Mr. Chance: I will ask the questions of Mr. Deegan and he can give the answers as the witness Edward Gratz has given them to the written interrogatories.

(The questions and answers were read as follows:)

[237]

"Q. What is your full name?

"A. Edward August Gratz.

"Q. What is your present address?

"A. 5106 Carnegie Street; that is temporary though; no permanent address.

"Q. What is your business or occupation?

"A. General boilermaker foreman.

"Q. By whom are you now employed?

"A. Unemployed.

"Q. By whom were you employed immediately prior to your present employment?

"A. Not employed now, but last previous employment was with Compania Constructora Bechtel-McCone.

"Q. Were you employed by Compania Constructora Bechtel-McCone, S.A., during the month of July, 1944?

"A. Yes.

"Q. If your answer to interrogatory No. 6 is 'yes' state when that employment started and when it terminated?

"A. Started 10-21-43—terminated 8-7-45.

"Q. If your answer to interrogatory No. 6 is 'yes' state in what capacity you were employed?

"A. General Boilermaker Foreman.

"Q. Do you know Doyle McDonald, the plaintiff in this action? [238]

"A. Yes.

"Q. If your answer to interrogatory No. 9 is 'yes' state when and where you met Doyle McDonald.

"A. Bahrein Island, Persian Gulf, Persia.

"Q. Did you have a conversation with Doyle McDonald during the month of July, 1944, with respect to his work for Compania Constructora Bechtel-McCone, S. A.?

"A. Yes.

"Q. If your answer to the last interrogatory is 'yes' state when and where said conversation took place and who was present at the time?

"A. Place, in front of construction office. Time, July 10, at approximately 9:15 in the morning. Nobody present.

"Q. State what was said by each person, as nearly as you can recall, at the conversation referred to in the last interrogatory, stating what, if anything, Doyle Mc-

Donald said to you and what, if anything, you said to him as nearly as you can recall.

"A. I inquired what he was doing off the job. He said he had terminated his job. That was all that was said at that time.

"Q. In his deposition in this action taken in May, 1945, Doyle McDonald testified as follows: [239]

" 'Mr. Works: Where are we on the calendar? Close to July 10, which was the date of the termination?

" "A. I believe that is July 8, 9 or 10.

" "Q. All right.

" "A. I came back the next morning, and I was standing there and came the superintendent of boilermakers.

" "Q. What was his name?

" "A. I only met him that one time. Gratz.

" "Q. You refer to Ed Gratz.

" "A. That is right. He said, 'I understand you had some trouble over there with Tam.' I said, 'There is nothing in particular wrong about that.' I said, 'A lot of fellows have had trouble with him.' 'Well,' he said, 'did you know I was superintendent here?' I said whether I knew it or not was immaterial to me at the present time. I said I was fired and going home. He said, 'Why did you go to the office. instead of me?' I said, 'I didn't particularly go to the office.' I said, 'I came over here to wait for a ride.' I said, 'Mr. McAuliffe and Mr. Vessels collared me, and they had heard I was going to work overtime and wondered why I wasn't there, and,' I said, 'I told [240] them.' He said, 'You are supposed to report this stuff to me first.' I said, 'Well, forget about it.' I said, 'I am not here to argue. I am waiting for somebody else.' He said, 'Well, you are fired. You are through.

You are finished.' He said, 'That is for sure.' He said, 'I am running the business, and I am going to continue to run it.' ” ”

"Is it true that in the conversation referred to in interrogatory No. 14 you said to McDonald, 'Did you know I was superintendent here?'"

"A. No.

"Q. Is it true that in the conversation referred to in interrogatory No. 14 you said to McDonald, 'Why did you go to the office instead of me?'"

"A. No.

"Q. Is it true that in the conversation referred to in interrogatory No. 14 you said to McDonald, 'You are supposed to report this stuff to me first?'"

"A. No.

"Q. Is it true that in the conversation referred to in interrogatory No. 14 you said to McDonald, 'Well, you are fired. You are through. You are finished. That is for sure.'"

"A. No.

"Q. Is it true that in the conversation referred [241] to in interrogatory No. 14 you said to McDonald, 'I am running the business and I am going to continue to run it.'?"

"A. No.

"Q. Did you have any conversations with Mr. McDonald other than the conversation already mentioned regarding the termination of McDonald's employment with Compania Constructora Bechtel-McCone, S.A.?"

"A. I had a conversation with him at the time he appeared on the job site and I had several conversations between that time and the time referred to in the answer to interrogatory No. 13, but I had no other conversation with him about termination.



"Q. If your answer to interrogatory No. 19 is 'yes' state when and where such conversations took place, the names of all persons present, and state what was said by each of the persons present as nearly as you can recall.

"A. When he came on the job site I asked him where he was from and what his capabilities were. He stated that he was a boilermaker. He didn't state where he was from and no one was present at that time nor at any other time. Our conversations were about his work, just pertaining to his work, telling him what he was supposed to do [242]

"Q. Did you discharge Doyle McDonald from his employment with Compania Constructora Bechtel-McCone, S. A.?

"A. No."

Mr. Chance: Now, Mr. Deegan, if you will turn to Mr. Gratz' answers to cross interrogatories and read them following my reading the question.

(The questions and answers were read as follows:)

"Q. Do you know Doyle McDonald?

"A. Yes.

"Q. Had you met Mr. McDonald on foreign construction jobs other than the one currently being worked at Bahrein Island on July 1944?

"A. No.

"Q. If so, where had you first met him?

"A. See answer to No. 2.

"Q. What was the character of workmanship and craftsmanship displayed by Mr. McDonald while in your employ and under your supervision?

"A. Inferior.

"Q. For what period of time were you in a position to intimately observe the work done by Mr. McDonald?

"A. Approximately four weeks.

"Q. Did you ever personally have occasion to be [243] dissatisfied with the work performed by Mr. McDonald?

"A. No.

"Q. If so, on what occasions? State the names of those present and relate the conversation, if any?

"A. See answer to No. 6.

"Q. Did you ever personally recommend to your superiors that Mr. McDonald be fired from the Bahrein project?

"A. No.

"Q. If so, to whom and on what occasions did you make such recommendation?

"A. See Answer to No. 8.

"Q. What reason, if any, prompted you to make such a recommendation?

"A. See answer to No. 8.

"Q. What action was taken by the supervisory officials on this recommendation?

"A. See answer to No. 8.

"Q. By whom was Mr. McDonald actually fired?

"A. He was not fired.

"Q. Did you possess the power to hire and fire the men under your supervision at Bahrein? Did you exercise this authority over Mr. McDonald?

"A. I did possess the power to fire, not to hire, the men under my supervision at Bahrein, subject to [244] the approval of the general superintendent. I did not exercise this authority over Mr. McDonald.

"Q. To your knowledge did Mr. McDonald have an altercation with Leon Tam on or about the 10th day of July, 1944?

"A. Not to my knowledge.

"Q. Were you personally present at the time of this altercation?

"A. See answer to No. 14.

"Q. Do you have any personal knowledge of what transpired between Mr. Tam and Mr. McDonald?

"A. See answer to No. 14.

"Q. Did Mr. Tam disclose any of the details to you in a conversation which occurred in the presence of Mr. McDonald?

"A. See answer to No. 14.

"Q. Do you have any independent knowledge of what transpired between Mr. McDonald and Mr. Tam other than what you learned through conversation with Leon Tam.

"A. See answer to No. 14.

"Q. If the answer to the preceding interrogatory is 'yes' state the source and state the names of those present when the disclosure was made to you.

"A. See answer to No. 14. [245]

"Q. Did Mr. McDonald state to you that he was willing to work in his craft anywhere on the Island other than under the supervision of Leon Tam?

"A. No.

"Q. Did you offer Mr. McDonald an opportunity to work under your supervision in a job other than the one supervised by Leon Tam?

"A. No.

"Q. Did you offer Mr. McDonald any work at all on the occasion of your conversation of July 10, 1944?

"A. No.

"Q. If you fired Mr. McDonald on the above date, did you do this on your own initiative or were you in-

structed to do so by other officers of the company? By whom?

"A. I did not fire Mr. McDonald, and he was not fired by anybody else, to my knowledge.

"Q. Prior to discharging Mr. McDonald, did you confer with Mr. McAuliffe or Mr. Vessels?

"A. See answer to No. 23.

"Q. Did you have any conversations at all with the above named men relative to discharging Mr. McDonald? With whom did you confer and who was present on that occasion? [246]

"A. No, and I conferred with no one on that subject at any time.

"Q. Did that individual instruct you to fire Mr. McDonald?

"A. See answer to No. 25.

"Q. Did you personally issue a termination slip to Mr. McDonald?

"A. No, but I signed his termination slip and handed it to the clerk in the office.

"Q. How much time elapsed from the time McDonald was discharged until he was transported from Bahrein?

"A. Mr. McDonald was not discharged and I do not know how much time elapsed from the time his job terminated until he was transported from Bahrein.

"Q. How many welders were working with McDonald on the bubble tower on and shortly prior to July 10, 1944?

"A. I do not know.

"Q. Did this number remain constant or did the number in the crew fluctuate?

"A. See previous answer.

"Q. If so, what caused the fluctuation in numbers of workmen? [247]

"A. See answer to No. 29.

"Q. What tools were constantly available at the bubble tower for use in joining the bubble tower sections?

"A. Turnbuckles, jacks, wedges, hammers, et cetera.

"Q. Had you personally instructed McDonald in the methods you wished him to use in joining the tower sections?

"A. No.

"Q. If so, what orders did you give? Did he follow these orders?

"A. See answer to No. 33.

"If not, in what way did he violate your orders?

"A. See answer to No. 33.

"Q. Did you instruct McDonald to use turnbuckles in joining the tower sections? How many turnbuckles were provided for use on the bubble tower site? What size turnbuckles were used?

"A. No. Approximately 8. Four foot and six foot.

"Q. Were steamboat jacks provided for the performance of this job? If so, how many?

"A. No. [248]

"Q. Did you ever personally order McDonald to use steamboat jacks in joining the tower sections?

"A. No.

"Q. How far was the tool storage room from the bubble tower?

"A. Approximately 300 yards.

"Q. How far was the main Awali camp from the bubble tower?

"A. Approximately three miles.

"Q. What means of transportation was used between Awali camp and the bubble tower?

"A. Motor bus.

"Q. Was the providing of tools and equipment for work on the bubble tower your responsibility or was it delegated to Mr. Tam?

"A. Both myself and Mr. Tam.

"Q. If Mr. Tam, by whom had Tam been ordered to perform such duties?

"A. Myself.

"Q. To your knowledge, were tools and equipment constantly available at the bubble tower as required by the workmen?

"A. Yes.

"Q. Under whose supervision were the trucks [249] which hauled material to the bubble tower?

"A. Mine.

"Q. Did McDonald have any authority, to your knowledge, to requisition a truck for the transportation of material?

"A. No.

"Q. By whom was such authority given, if you know?

"A. Myself and Tam subject to my approval.

"Q. If not, who had such authority?

"A. See answers to Nos. 46 and 47.

"Q. If you did not discharge Mr. McDonald, by whom was he discharged, if you know?

"A. To my knowledge he was not discharged, but terminated himself."

Mr. Chance: Your Honor, we have a stipulation with counsel in the same form as the stipulation for the taking of the deposition of Edward Gratz. It is attached to the interrogatories that we have just looked at for the taking of the deposition of Iner Ahrendt, who was the welding inspector, whom it was testified was present at the occasion of the altercation between Mr. McDonald and Mr.

Tam, and we also have a like deposition with respect to the taking of the deposition of Harold Vessels, who was the assistant project manager. [250]

Now, the stipulation, and this of course is subject to your Honor's approval, obviously provides in part that this stipulation shall be without prejudice to the commencement of the trial of the above entitled action on October 1, 1945. It further provides:

"If said deposition is not completed and filed prior to the completion of the trial of said action the court may submit said case pending the filing of said deposition and consider the same when filed, and if upon consideration of said deposition the court so requests a further hearing may be had."

Now, I might explain that this gentleman, Iner Ahrendt, has been a person that we have been trying to locate and run down for weeks and we finally found his whereabouts last Thursday after very diligent search; we thought he was in Milwaukee but we found on inquiry that he had gone to Delaware and his deposition is being taken tomorrow morning. We talked to him on the telephone and he is having his deposition taken in the attorney's office in Wilmington, Delaware, tomorrow morning, which in the normal course should be back here by Friday.

The deposition of Harold Vessels had to be taken in Houston, Texas, and similar circumstances occurred there. We expect that deposition to be back today. It was taken yesterday and mailed out of Houston which should get in here [251] sometime today. So far, however, it has not come in. In view of those circumstances I am going to have to request a continuance of the matter, we will say, until Friday, if convenient to your Honor's calendar, or next week, at which time we would like to put in the

balance of these two depositions. I think they are quite material as there has been a great deal of conflict in the testimony. That is particularly true with Iner Ahrendt because he would be a disinterested witness as he was not employed by the defendants or associated with the plaintiff. If your Honor desires, we could continue the matter and put those in. It might take a half hour to do and then we could orally argue the matter or submit it on briefs that are already on file or follow your Honor's desire in that matter, unless counsel has some other suggestion.

Mr. Sheridan: It would be my wish, if the court please, to orally argue the matter; to let it stand submitted, if that is the court's desire, and let these depositions speak for themselves at the time they are received, because as we have stipulated they may be received by the court and made a part of the record and used and utilized for the purpose of the court coming to its decision.

The Court: I think I would like to have at least 20 or 30 minutes of argument on each side. Of course I do not want to make any disposition of the case until the depositions [252] are in. In any event, when they are received the reporter will make them a part of the record just as though they had been read in open court.

Do you have any rebuttal?

Mr. Sheridan: I think that evidence is material and vital and the court needs it in order to reach a decision.

The Court: You may have some rebuttal, not knowing what the contents of those depositions are going to be, but it should not take very long after they are here. I am just wondering if they will be here by Friday.

Mr. Chance: They should be in the normal course by Friday, but there is a fair likelihood that the one from



Delaware may not get back by that time. I look for it to be in Friday. However, the deposition we took of Gratz in Pittsburgh took longer to come out than we had anticipated. I understand a number of the planes are being grounded right at the moment from the East out here on account of weather conditions, but whatever your Honor desires is perfectly all right with me.

The Court: The state of my calendar is such if I put this over to next week it will conflict with a jury trial that is going to run the entire week. I think I shall continue this then until Monday morning at ten o'clock following anything that might develop on the law and motion calendar and then give you until noon, if that time is needed or required, [253] to complete the argument and complete any oral testimony in the nature of rebuttal.

Mr. Sheridan: If the court please, I am scheduled for a trial in the Superior Court. I know you cannot grant any concessions for State trials, but I am starting Friday morning on a three-day jury trial in the Superior Court and my time will be taken up Friday, Monday and Tuesday. That is the reason I requested this court, if it felt so inclined, to let the oral argument be made now and the matter stand submitted.

The Court: I am afraid the oral argument would not be helpful pending the testimony of the two witnesses and any possible rebuttal.

Mr. Chance: May I make a suggestion that we might fit it in with your Honor's calendar and with Mr. Sheridan's calendar and mine at some later day next week. Possibly your clerk could notify us when you had the time.

The Court: I think I shall just have the clerk make a minute entry that this matter is continued for further

hearing until some day next week, the date to be announced later.

Mr. Chance: Thank you very much, your Honor.

Mr. Sheridan: Thank you.

The Court: And then we will see what the situation is by Monday or Tuesday. [254]

Mr. Chance: That is entirely satisfactory, your Honor.

The Court: Is there anything further in connection with this case at this time?

Mr. Chance: Not at this time from the defendant, your Honor.

Mr. Sheridan: Nothing further, your Honor, at this time.

The Court: Very well, we will suspend until a date to be announced next week.

(Whereupon, at 2:45 o'clock p.m., the above entitled matter was continued without date.) [255]

\* \* \* \* \*

Los Angeles, California, Tuesday, October 9, 1945  
2:00 P. M.

The Clerk: No. 4549, McDonald vs. Bechtel-McCone Corporation, and others, for further trial.

Mr. Chance: Ready.

Mr. Sheridan: Ready, your Honor.

The Court: You may proceed.

Mr. Chance: Your Honor, we have two depositions that we desire, on behalf of the defendants, to introduce into evidence, if your Honor has the originals in the file.

The Court: Yes, I have.

Mr. Chance: Would your Honor desire to read from that, and we will read them into the record. We have a copy here.

The Court: Very well.

Mr. Chance: It will facilitate it, your Honor, if you will follow this.

The Court: Yes. I have read the depositions, but I would be glad to have you read them into the record and further refresh my memory. I read them in the interim.

Mr. Chance: Counsel, I believe, has not had a chance to see these, so we will go ahead. I will read the questions and Mr. Deegan will give the answers of the witness, Harold Vessels, taken pursuant to written stipulation on file in this case.

The questions are these: [258]

"Q. What is your full name?

"A. Harold Frances Vessels.

"Q. What is your present address?

"A. 3608 Carnegie Street, Houston, Texas.

"Q. What is your business or occupation?

"A. Construction superintendent.

"Q. By whom are you now employed?

"A. At present time I am working for myself, doing a little work for myself, while I am waiting for a job to reopen with Bechtel-McCone.

"Q. By whom were you employed immediately prior to your present employment?

"A. Bechtel-McCone-Parsons.

"Q. Were you employed by Compania Constructora Bechtel-McCone, S. A., during the month of July, 1944?

"A. Yes.

"Q. If your answer to interrogatory No. 6 is 'yes' state when that employment started and when it terminated.

"A. It started April 18th, 1944, and I guess it ended on May 18th, 1945.

"Q. If your answer to interrogatory No. 6 is 'yes' state in what capacity you were employed.

"A. In July, 1944, I was acting as Assistant Project Manager on the job, and later my title was [259] changed to Assistant General Superintendent.

"Q. Do you know Doyle McDonald, the plaintiff in this action?

"A. Yes.

"Q. If your answer to interrogatory No. 9 is 'yes' state when and where you met Doyle McDonald.

"A. I first met Doyle McDonald in Cairo, Egypt, in the latter part of May, 1944.

"Q. Did you have a conversation with Doyle McDonald during the month of July, 1944, with respect to the termination of his employment with Compania Constructora Bechtel-McCone, S. A.?

"A. Yes.

"Q. If your answer to the last interrogatory is 'yes' state when and where said conversation took place and who was present at the time.

"A. The first conversation with McDonald took place just outside of the construction office, and later Mr. McAuliffe joined us in this conversation. The second conversation was a very brief conversation the following morning. There was no one present at the second conversation except McDonald and myself. This second conversation took place just outside of the construction office.

"Q. State what was said by each person, as [260] nearly as you can recall, at the conversation referred to

in the last interrogatory, stating what, if anything, Doyle McDonald said to you and what, if anything, you said to him, as nearly as you can recall.

"A. On the evening in question I was coming into the construction office and saw Mr. McDonald. Knowing that he was supposed to be working overtime that evening I was curious to know why he was standing around outside of the office. Upon questioning about this overtime work he told me he had had some trouble with Mr. Tam, and was not going to work over-time that evening, and he was waiting for a ride to go in to Awali, which was the camp. About that time Mr. McAuliffe came out of the office, and I called him over, whereupon Mr. McDonald told him, in substance, what he had discussed with me. As Mr. McAuliffe and I were leaving McDonald was told to come out the next morning, and we would see what could be done about it. The next morning when I came into the construction office McDonald was there, and he told me he had just seen Mr. Gratz, and that he would go back into camp. I told McDonald to go on out to work, and as soon as I had an opportunity we would see what could be [261] done. I don't remember definitely what he answered, but it was in the negative, because shortly afterward he went back to camp."

Mr. Chance: Question No. 14 is a quotation from the McDonald deposition taken on May 19th, this year, in this action, and I will not take the court's time to read that quotation, as we have been over it before, but the question in the interrogatory is as follows:

"Is it true that in the conversation referred to in this interrogatory No. 14 McDonald said, 'Seem as though

I can't work for Tam. Have you got any other job? I'd just as soon work on another job'?

"A. I definitely remember about McDonald stating that he couldn't get along with Tam; other than that I don't remember.

"Q. Is it true that in the conversation referred to in interrogatory No. 14 McAuliffe said, 'Well, we are going to stop this transferring, put a stop to it. We will see. You come back out in the morning, and report to Harold Vessels. You come back and see Mr. Vessels, and he will take care of it.'? If your answer to this interrogatory is in the negative, or if the foregoing is not an accurate statement of the conversation, state as nearly as [262] you can remember the substance of what McAuliffe said at that point in said conversation.

"A. All I can definitely say is that McAuliffe did tell him to come out the next morning; other than that I am unable to state. I don't remember.

"Q. Is it true that in the second conversation following the first conversation referred to in interrogatory No. 14 you said, 'Mac, go on out there and go to work.'?

"A. Yes, that is true.

"Q. Is it true that in the second conversation referred to in interrogatory No. 14 McDonald replied to you, 'Ed Gratz just fired me. On top of Tam, Gratz made it unanimous. I am fired and I am going back to camp.'?

"A. I can't state that. I don't remember definitely what was said.

"Q. If your answer to the foregoing interrogatory is in the negative, or if the statement there related is not accurate according to your recollection, state the substance of McDonald's reply as near as you can remember.

"A. As near as I can remember McDonald told me he had just talked to Mr. Gratz. I don't recall [263]

what he said the conversation was, but I do remember telling him to go on out and go back to work.

"Q. Did you give any instruction to McDonald on the day after his altercation with Tam in July, 1944, with respect to McDonald returning to his work?

"A. None, other than what I have stated."

Mr. Chance: We will skip No. 21, because it has already been answered. No. 22:

"Q. If your answer to interrogatory No. 20 is in the affirmative, state whether or not McDonald complied with your instruction and what McDonald did, and what McDonald said, and what he did in that respect.

"A. McDonald did not go to work; he went back to camp. Definitely as to what he said, I don't recall."

Mr. Chance: Now, that is the conclusion of the Vesels' deposition.

I would like now to read into the record the questions and answers propounded on written stipulation on file in this action to Iner Ahrendt. I will read the questions, with the court's permission, and will ask Mr. Deegan to read the answers given by the witness, Iner Ahrendt: [264]

"Q. What is your full name?

"A. Iner Ahrendt.

"Q. What is your present address?

"A. 11 Avenue E, Claymont, Delaware.

"Q. What is your business or occupation?

"A. Welding Engineer.

"Q. By whom are you now employed?

"A. A. O. Smith Company, Milwaukee, Wisconsin.

"Q. By whom were you employed immediately prior to your present employment?

"A. By the same corporation at Milwaukee, Wisconsin. I have been with the A. O. Smith Company for the past 23 years.

"Q. Were you employed by the Bahrein Petroleum Company, Limited, a corporation, during the month of July, 1944?

"A. During the month of July, 1944, I was employed by A. O. Smith Company which had a contract with the Bahrein Petroleum Company, Limited, to supervise the welding of pressure vessels.

"Q. If your answer to interrogatory No. 6 is 'yes' state when that employment started and when it terminated.

"A. My association with the job of A. O. Smith Company for the Bahrein Petroleum Company, [265] Limited, began about March 1, 1944, and ended March 8, 1945.

"Q. If your answer to interrogatory No. 6 is 'yes' state in what capacity you were employed.

"A. My employment on the job was in the capacity of welding engineer.

"Q. Do you know Doyle McDonald, the plaintiff in this action?

"A. Yes.

"Q. If your answer to interrogatory No. 9 is 'yes' state when and where you met Doyle McDonald.

"A. I met Doyle McDonald on the job. That was the first time I had ever met him.

"Q. Do you know Leon Tam?

"A. Yes.

"Q. If your answer to interrogatory No. 11 is 'yes' state when and where you met Leon Tam.

"A. I also met Tam for the first time on the job. I did not know him before that time.

"Q. Were you present at a conversation between Doyle McDonald and Leon Tam during the month of July, 1944, when a certain instruction was issued by Tam



to McDonald in the course of assembling a bubble tower on Bahrein Island?

"A. I was not present at the time, but learned [266] about it later and I was present when there was some discussion or argument between Tam and McDonald. I did not remain throughout the whole of the argument. There was a place boarded off and designated as a place where men could sit down and smoke, smoking being prohibited at other places, and while the argument was in progress I went to this boarded off place and took a smoke.

"Q. If your answer to the last interrogatory is 'yes' state when and where said conversation took place and who was present at the time?

"A. During the time when I was present while the argument was going on, I do not recall that anyone was present other than Tam and McDonald, except that there were some coolies around there. I have no memoranda to place the exact time when this argument took place. July, 1944, sounds about right, but I have no way of fixing the date in that month.

"Q. State what was said and done by each person, as nearly as you can recall, in the conversation referred to in interrogatory No. 13, stating what, if anything, Doyle McDonald said to Leon Tam, and what, if anything, Leon Tam said to Doyle McDonald, and the full conversation, as [267] clearly as you can recall.

"A. As near as I can remember about that McDonald, I believe, did mention to me that Tam had told him to get these two turnbuckles from another job and he refused to do it, and then in the meantime Tam came around and evidently said something about whether he had gotten these turnbuckles. No doubt Tam gave him orders to get them and that was when this argument started and that

was when I left, because I didn't want any part of the argument, and in fact my orders were to stay clear of those things and I went over and took a smoke and I was quite a way from them and so exactly what was said I did not hear. As soon as Tam came over there and started to talk with McDonald, I walked away. I don't remember a word that was said during that altercation. However, the next day I didn't see McDonald on the job. I don't know whether he was fired or quit, I don't know. I didn't pay any attention to it at the time."

Mr. Sheridan: Your Honor, I request that that last answer, the first part of the answer, be stricken, in which he said, "I believe" and "evidently," and so forth, because it is all pure supposition of the witness. [268]

The Court: That is true, but there will be no harm done, because much of that is already in the record. The court appreciates the fact that that is incompetent evidence and is an expression of opinion.

Mr. Chance, (Continuing reading):

"Q. Was any instruction given by Leon Tam to Doyle McDonald in the course of the conversation referred to in the last interrogatory?

"A. I was not present when Tam gave the instructions to McDonald to get the turnbuckles, but I know about that from what McDonald said to me. He told me that he had been ordered to get the turnbuckles but had refused because they were too heavy. Tam also told me that he had ordered McDonald to get the turnbuckles and that McDonald had refused.

"Q. If your answer to the last interrogatory is 'yes' state what the instruction was that Tam issued to McDonald in the course of said conversation.

"A. My answer to this question is covered by my answer to the last question.

"Q. How long have you been engaged in and about the construction or inspection of oil refineries?

"A. For the last twenty years.

"Q. Have you an opinion as to whether or not the [269] instruction issued by Tam to McDonald, referred to in interrogatory No. 17, was a reasonable instruction?

"A. Yes.

"Q. If your answer to the last interrogatory is 'yes' state what your opinion is as to the reasonableness of said instruction.

"A. Those turnbuckles were not over a block and a half away from the site where this bubble tower was being assembled and I realize that they were heavy but they were not too heavy for two men to carry and if McDonald was not able to carry them alone he did have coolies to send to carry them for him. Therefore, I can see no reason why they weren't gotten.

"Q. State if you know whether or not it is customary and usual practice in oil refinery construction work to employ turnbuckles in the assembly of bubble tower sections approximately 12 feet in diameter and approximately 15 feet in length, each section weighing approximately 20 tons.

"A. Yes. They are used in assembling heavy vessel sections.

"Q. State whether or not to your knowledge turnbuckles were customarily employed in the assembly [270] of such bubble tower and other tower and vessel sections in Bahrein Island in the year 1944.

"A. Yes."

Mr. Chance: Now, Question No. 23 is a quotation from the McDonald deposition taken in May of this year

in this action, which I will not quote here, but the interrogatory No. 23 is as follows, following the quotation:

"Is it true that in the conversation referred to in this interrogatory No. 23 Tam said to McDonald, 'Where in the hell are your turnbuckles?'

"A. I don't recall hearing that. I do know that they had hydraulic jacks on the job and the turnbuckles that were used on there with the hydraulic jacks done the job, so both of them were necessary. All the time that I was present on the job while there was any welding it was done by welders. However, in the course of assembling if a welder did not happen to be present the boilermakers did do some tack welding.

"Q. Is it true that in the course of the conversation referred to in interrogatory No. 23 McDonald said to Tam, 'I told you the other day to give me a truck and I would gather those up, and you put it off.'?"

"A. That I don't remember. I don't remember [271] hearing that.

"Q. Is it true that in the conversation referred to in interrogatory No. 23 Tam said to McDonald, 'I want turnbuckles on there, and I want them on right now.'?"

"A. That is a part of the conversation between Tam and McDonald that I don't know about.

"Q. Is it true that in the course of the conversation referred to in interrogatory No. 23 McDonald said to Tam, 'You had better grow them. Then we can put them on.'?"

"A. I don't recall that at all.

"Q. Is it true that in the conversation referred to in interrogatory No. 23 Tam said to McDonald, 'You are through, get off the job.'?

"A. That I didn't hear. I don't know to this day whether that man was fired or quit. I heard no one say he was fired. I heard no one say anything about it.

"Q. If your answer to all or any of interrogatories Nos. 23, 24, 25, 26 and 27 is in the negative or is to the effect that the statements referred to were not as you recall them having been made in said conversation, then please state what was said in each particular respect by Tam and McDonald, [272] respectively, as near as you can recall.

"A. I have already stated practically all I can remember that took place while I was at the spot where the argument between Tam and McDonald was going on. On account of the argument I walked away as I have explained.

"Q. Have you ever been employed by Bechtel-McCone Corporation or by Compania Constructora Bechtel-McCone, S.A.?

"A. No.

"Q. Were there any Arab workers with McDonald or at the site of the bubble tower on the afternoon of July 9th or 10th when the altercation between McDonald and Tam occurred?

"A. There were always Arab coolies on the job and there were some of these Arab coolies there at the time of the argument. They must have been.

"Q. If your answer to the last interrogatory is 'yes' kindly state approximately how many Arab workers were present on the site in the afternoon of that day.

"A. I did not count them but I would say at least six.

"Q. After McDonald and Tam had the altercation on July 9th or 10th testified to in your preceding [273] answers, did McDonald come over to you and did you say to him at that time in substance that, 'What's the matter with that fellow Tam? Why doesn't he let the workmen alone?'

"A. No. I made no such remark.

"Q. Did you have a conversation with McDonald on the afternoon immediately following the altercation with Tam referred to in your preceding answers?

"A. No.

"Q. If your answer to the last interrogatory is 'yes' state what, as best you recall, you said to McDonald and what he said to you on that occasion.

"A. I recall no conversation with McDonald after the argument.

"Q. Was it, according to your observation of the construction work on Bahrein Island during the year 1944, usual and common practice for boilermakers to use turnbuckles along with other equipment in the assembly of sections of the kind being assembled on the bubble tower at which the altercation referred to above took place?

"A. Yes.

"Q. Did you observe what, if anything, Tam [274] did immediately following the altercation with McDonald with respect to obtaining turnbuckles for completing the bubble tower section assembly on the same afternoon?

"A. Yes.

"Q. If your answer to the last interrogatory is 'yes' kindly state what you observed Tam did immediately

following the altercation with McDonald with respect to obtaining turnbuckles.

"A. Immediately after that Tam walked up to this other job and got the turnbuckles and brought them back. He took some coolies along with him, I believe."

Mr. Chance: That completes the Ahrendt deposition, if your Honor please.

Then we have one short stipulation that I would like to propose to counsel. We have discussed it heretofore. The defendants offer to stipulate, but without waiving the legal point that the defendants will make in the argument, namely, that the proper measure of damages, as we view the case, does not involve or does not include the item of subsequent earnings of the plaintiff, even if your Honor were to determine the issues otherwise adversely to the defendants—subject to that point that we do not waive the proposition of law, but to make the record complete we offer to [275] stipulate that the plaintiff's earnings in other occupations subsequent to April 30, 1945, and we have already put into the record on a stipulation his earnings down to May 1st of this year, were as follows:

In the month of May, 1945, \$244.10 was earned by plaintiff in other occupations; in June, 1945, \$338.20; in July, 1945, \$481.50; in August, 1945, \$351.35; in September, 1945, \$346.29, amounting in total from May 1, 1945, to September 30, 1945, to a total of \$1,761.44.

Is that stipulated to, counsel?

Mr. Sheridan: That is so stipulated. Your Honor, if the court pleases, I can introduce the checks of the plaintiff also.

Mr. Chance: I don't think it is necessary.

The Court: I don't think it is necessary, in view of your stipulation.

Mr. Sheridan: Very well. The plaintiff will need them for his income tax purposes if the court does not desire them.

Mr. Chance: The defendants have no further testimony, your Honor.

The Court: Do you have any rebuttal, Mr. Sheridan?

Mr. Sheridan: No rebuttal, your Honor.

The Court: Then I will hear you on your argument, and in order that we might possibly shorten the argument and [276] have you come to the points the court has in mind, I will state that it is not necessary that any argument be made at all on the question as to whether the use of turn-buckles or some other device was the highest or the best or the most essential use to be engaged in in getting this work done, because the court takes the position that it was the plaintiff's duty, irrespective of what Mr. Tam, his immediate foreman, knew about the work, or how competent or incompetent he was, when he was given an order it was his duty to carry it out, whether it was wise or unwise.

Now, will you let me have the file, and particularly the exhibits?

(The documents referred to were handed to the court.)

(Argument on behalf of plaintiff by Mr. Sheridan.)

(Argument on behalf of defendants by Mr. Chance.)

(Closing argument on behalf of plaintiff by Mr. Sheridan.) [277]

The Court: I am not going to attempt to detail the evidence, as I see it, nor to summarize it at length, except as I shall make some reference to it in making a disposition of this controversy.



The first matter that we must give consideration to, naturally, is this written contract of employment. Ordinarily we do not have in a situation of this kind, if it were domestic rather than foreign service, a written contract of employment. I daresay that almost 99 per cent of employment contracts between an individual and a construction corporation are on an oral basis. But here the employer was taking the employee many thousands of miles from his home in a period of war, when travel was much restricted, and when it was extremely expensive, and when only such movements and such activities as are indicated by this contract were engaged in by reason of the part which they played in the war effort itself. This contract of employment undoubtedly was one that was drawn by the employer, and then signed by it and the employee here. Being drawn by the employer, of course, it cannot be interpreted favorable to the employer, in any interpretation of it and its terms. The three paragraphs that bear directly upon the issues here are the covenants contained in paragraphs 6, 9 and 10. 6 recites the obligations that the employee assumes, and 9 has a special provision for the termination of the contract by [278] either of the parties, and 10 provides for a termination of the contract and liabilities thereunder by the employer, if they should elect to do so and if they have a sufficient cause for doing so.

It is the contention of the plaintiff that without cause he was discharged and the contract was breached, and that the liability arises for the loss that he sustained during the remaining period of this contract, which was an 18 months contract, as I recall it. Performance had proceeded for about a month, or a little longer period of time, under the contract.

The defendant contends that the plaintiff summarily ceased to perform under the terms of the contract, and, therefore, is not entitled to any recovery.

In attempting to arrive at what the actual facts were in this case, I cannot, of course, adopt the testimony of either the plaintiff or the defendant to the exclusion of the other, because there is nothing in this situation that would indicate to the court that all truth lies on one side and all error on the other. I must attempt, insofar as it is humanly possible to do so, to visualize the situation as it must have occurred 10,000 miles away out there in the Mediterranean Ocean, on some little island, where a terrific and hurried effort was made to bring into future utilization that great essential in carrying on the war, additional [279] petroleum supplies.

It is totally beside the question here as to whether Mr. McDonald, the plaintiff in this case, or Mr. Tam, his immediate foreman were the better qualified to judge as to the means and methods and procedures in construction, and I am not going to attempt to determine that, other than to say in passing that Tam must have possessed some of the essential qualifications for this rather complex construction, as well as did the plaintiff, Mr. McDonald.

It was Mr. McDonald's duty, whether he was so inclined or not, and whether the order that Tam gave him was consistent with the most expeditious and efficient manner of construction, it was still his duty, I find, to obey the order in reference to getting these turnbuckles. He made no real effort to do that, and he didn't intend to do it, and, certainly, if this were not at a place far distant from this country and under the situations that here prevailed, he committed an act that would have been the basis of a summary cancellation of the contract and all liabilities by the employer.

I must find that the order to proceed with construction, as given by Foreman Tam, was sufficiently within his rights to give so that disobedience was equivalent to insubordination. And I do find that Tam after this altercation,—that the altercation was not a mere passing difference, it [280] was one that at the moment threatened great physical violence to one or both of these parties, and but for the good judgment somewhat on both sides it didn't break out into an actual physical encounter, but it resulted in a situation, under working conditions such as must have prevailed here, where these two men simply could not live side by side even through working hours thereafter. Tam undoubtedly stated that McDonald was discharged, but he did not have the authority to discharge him and abrogate McDonald's rights under this contract, because he himself occupied a subordinate position.

It appears from the evidence in this case, so far as the workmen were concerned, if there was any authority to discharge, it was with this man Gratz, although he was, in the final analysis, only an employee of the defendant company. But he was the superior of Tam. Certainly, under the procedure there prevailing, when he said a man was discharged, and there is something in the evidence that supports this conclusion of the court, that would be a discharge except that there be intervention by someone still higher, and the next in authority was a direct representative of the employer, the parties obligated under this contract, and that was Mr. Vessels, and his superior, Mr. McAuliffe, who was the man finally in authority and who made determinations.

I must find that on the evening of July 9th, following [281] the altercation between the plaintiff and Tam, the matter came to the attention of Vessels, and Vessels' superior, Mr. McAuliffe, and they did not elect to find that there was insubordination. They might have done so, and then this court would be confronted with an entirely different problem. But they elected, on the contrary, to overlook what had occurred, and directed the plaintiff to report back for work the next day. He did report back, and then, whether it was before or after his further contact with Vessels and McAuliffe, he contacted Gratz, who was the superior of Tam, and who evidently was the man on this particular job that had some real authority. Gratz advised the plaintiff, and the court has no hesitancy in finding it was not in any friendly tone, that the plaintiff should have brought his troubles to his superior in the boilermakers' organization, that is, Mr. Gratz, and not have gone to the employer, Vessels and McAuliffe. He was angry about that, and then he affirmed what his subordinate, Mr. Tam, had said and done, and said, "You are discharged."

Now, still the parties primarily liable under this contract, through their representatives, didn't accept the action of either Tam or Gratz, except to this extent: when the plaintiff reported to them, and plaintiff was then perfectly willing to continue to perform under the contract, but that willingness was conditioned upon the fact that he [282] would not be directly under the supervision of Foreman Tam, he was advised to go back to work, but

under the immediate and direct supervision of the man that the court must find, from the situation as it is disclosed by the evidence here, created an impossible condition and he could not have worked there and would not have been able to continue long because of the tremendous bitterness that had been engendered because of the encounter of the day before. There is no necessity for me to determine who was the man to blame. So this order of Mr. Vessels and Mr. McAuliffe created a situation that made it impossible for the plaintiff to further perform, and could result in only one thing, and that is a termination of the contract.

Now, the court having found that the defendant—I might have misspoken myself before and said the plaintiff—the defendant by a course of conduct terminated this contract, would it follow, as a matter of law, that the liability would be for the life of the contract or would that termination be in accordance with the rights of the defendant under the contract itself? Certainly, if the defendant had written out formally a notice to this plaintiff that: you will remain on the pay roll for 30 days, and thereafter your services will be terminated, and under the contract it was not required to give any reason whatever, it could not have been more effective than what did occur. I am forced to the [283] conclusion that, as a matter of law, the plaintiff could not and cannot recover herein more than the one month's wages and his transportation back home. The termination is one that was not formal, yet was within the rights of the defendant to make, and the defendant could make it in the manner in which it

did, by logical inference to be drawn from undisputed facts, rather than by the formal procedure as provided by the contract itself, that is, a written notice.

For the reasons stated, I shall find that the plaintiff is entitled to recover herein the sum of such an amount as is measured by one month's compensation, plus his transportation back home, less any advances, if there are any. I do not know how those figures finally work themselves out. Findings of fact and conclusions of law and a decree may be submitted next Monday, if possible. That is our law day.

Mr. Chance: Thank you, your Honor.

The Court: Now, if there is any other feature in connection with this case that I haven't made clear in my offhand memorandum judgment or decision, in disposing of it, I would like counsel to state it now, because I trust that you can get together and work out the findings of fact and conclusions of law without bringing the matter back again for further argument.

Mr. Chance: Will counsel prepare and submit the findings to us under the rules, and we will shorten the time [284] so that they can be presented to your Honor?

Mr. Sheridan: Yes. I will prepare a set and submit them to Mr. Chance.

Mr. Chance: I think we understand your Honor's direction.

The Court: Very well. [285]

CERTIFICATE.

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 5th day of November, A. D., 1945.

JACK D. AMBROSE

Official Reporter

[Endorsed]: Filed Nov. 23, 1945.

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[Endorsed]: No. 11222. United States Circuit Court of Appeals for the Ninth Circuit. Compania Constructora Bechtel-McCone, S. A., a corporation, Appellant, vs. Doyle McDonald, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed December 31, 1945.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11222

COMPANIA CONSTRUCTORA BECHTEL-Mc-  
CONE, S. A.,

Appellant,

vs.

DOYLE McDONALD,

Respondent.

STATEMENT OF POINTS ON WHICH APPEL-  
LANT INTENDS TO RELY ON APPEAL AND  
DESIGNATION OF PARTS OF THE RECORD  
NECESSARY FOR THE CONSIDERATION  
THEREOF.

The following is a statement of the points upon which appellant, Compania Constructora Bechtel-McCone, S. A., intends to rely on its appeal from the judgment heretofore entered in this action:

1. The uncontradicted evidence establishes that respondent voluntarily abandoned his rights under the employment contract sued upon by refusing to report for work as instructed by appellant, and the court's finding to the contrary is wholly without support in the record.

2. The uncontradicted evidence establishes that appellant's course of conduct in refusing to transfer respondent to another job and instructing him to return to work under the supervision of foreman Tam was consistent with appellant's rights under the employment contract and did not amount to a wrong-



ful discharge, and the court's finding to the contrary is wholly without support in the record.

3. The court's finding that foreman Tam created a condition rendering it impossible for respondent to further perform under Tam's supervision is wholly without support in the record and is inconsistent with the court's prior findings that respondent made no real effort to obey and did not intend to obey Tam's instructions, and that such disobedience was equivalent to insubordination.

4. The court's finding that appellant made it impossible for respondent to further perform the employment contract is wholly without support in the record.

5. Assuming but not conceding that respondent was discharged, his refusal to obey the instructions of his superiors constituted sufficient cause for such discharge as shown by the uncontradicted evidence, and the court's finding to the contrary is wholly without support in the record.

6. The court's finding that on July 9, 1944, respondent wrongfully refused to comply with the reasonable instructions of foreman Tam with reference to obtaining and using the turnbuckles, together with respondent's own testimony that Tam told him he was fired and that general boilermaker foreman Gratz told him he was fired, together with the instruction of the project manager that respondent was to report back to work under Tam and respondent's re-

fusal to comply with the latter instruction, as a matter of law constituted a termination of the employment contract by respondent, thereby precluding respondent from any recovery whatever.

Appellant hereby designates the following as the portions of the record necessary for consideration of the points on which it intends to rely on its appeal herein:

\* \* \* \* \*

Dated, December 29, 1945.

O'MELVENY & MYERS  
JACKSON W. CHANCE and  
LEO A. DEEGAN

By Leo A. Deegan

Attorneys for Appellant, Compania Constructora  
Bechtel-McCone, S. A.

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jan. 4, 1946. Paul P. O'Brien,  
Clerk.